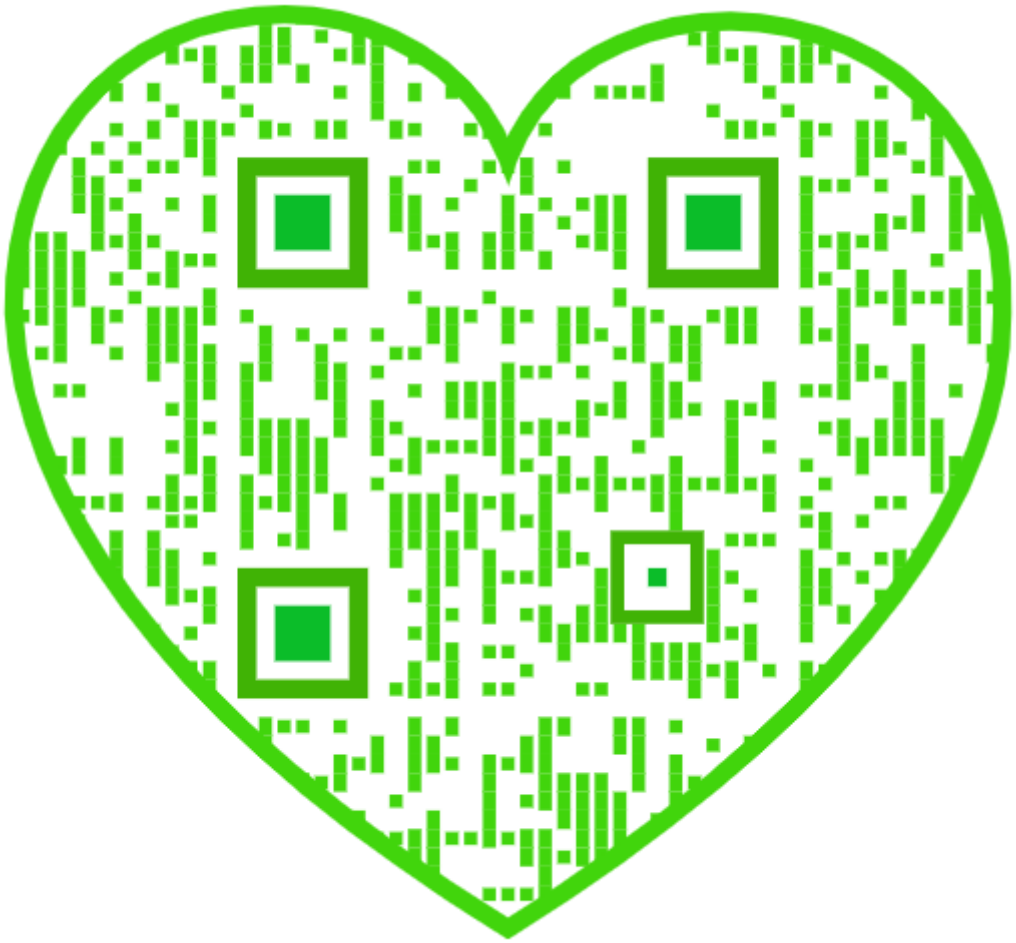

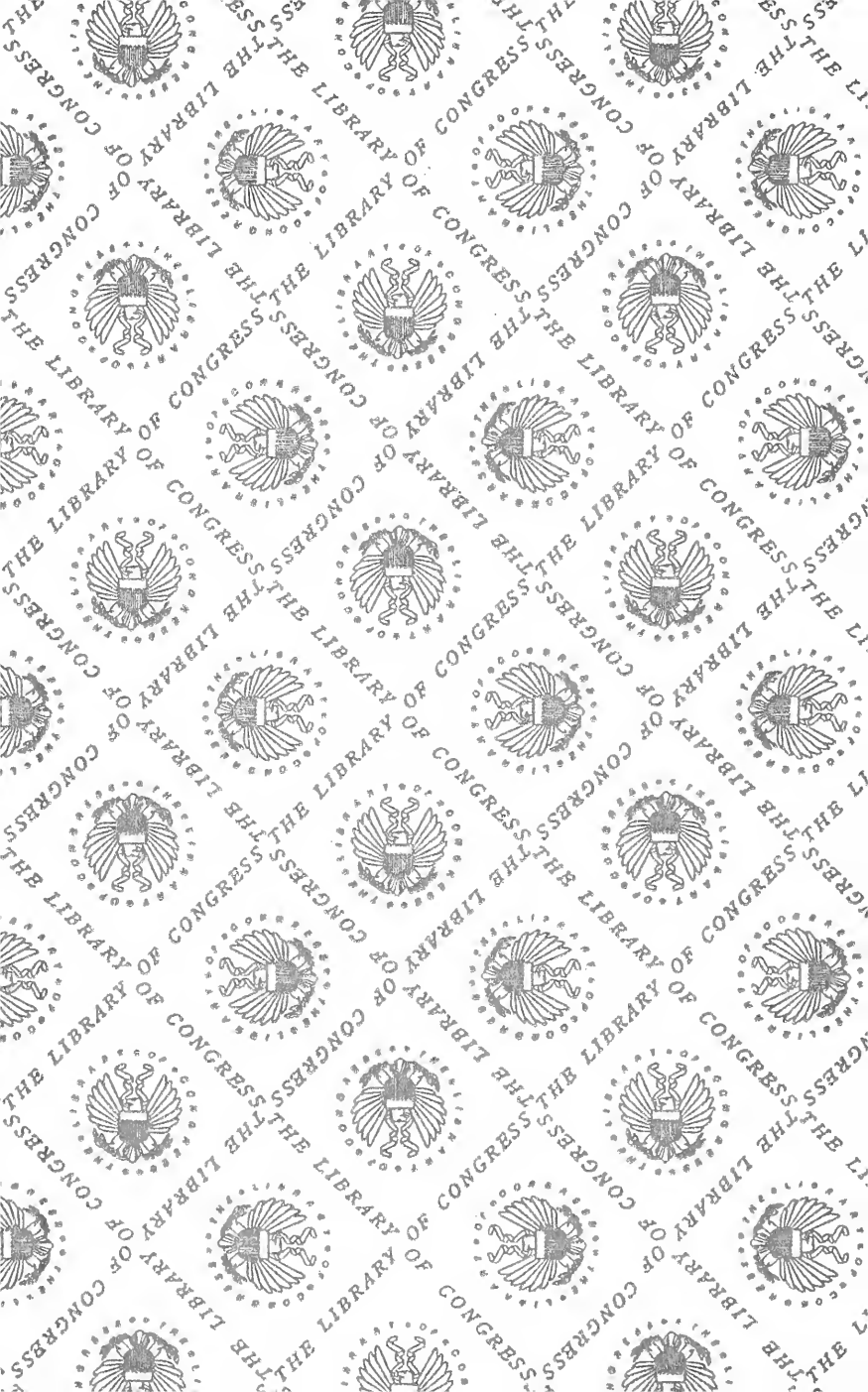
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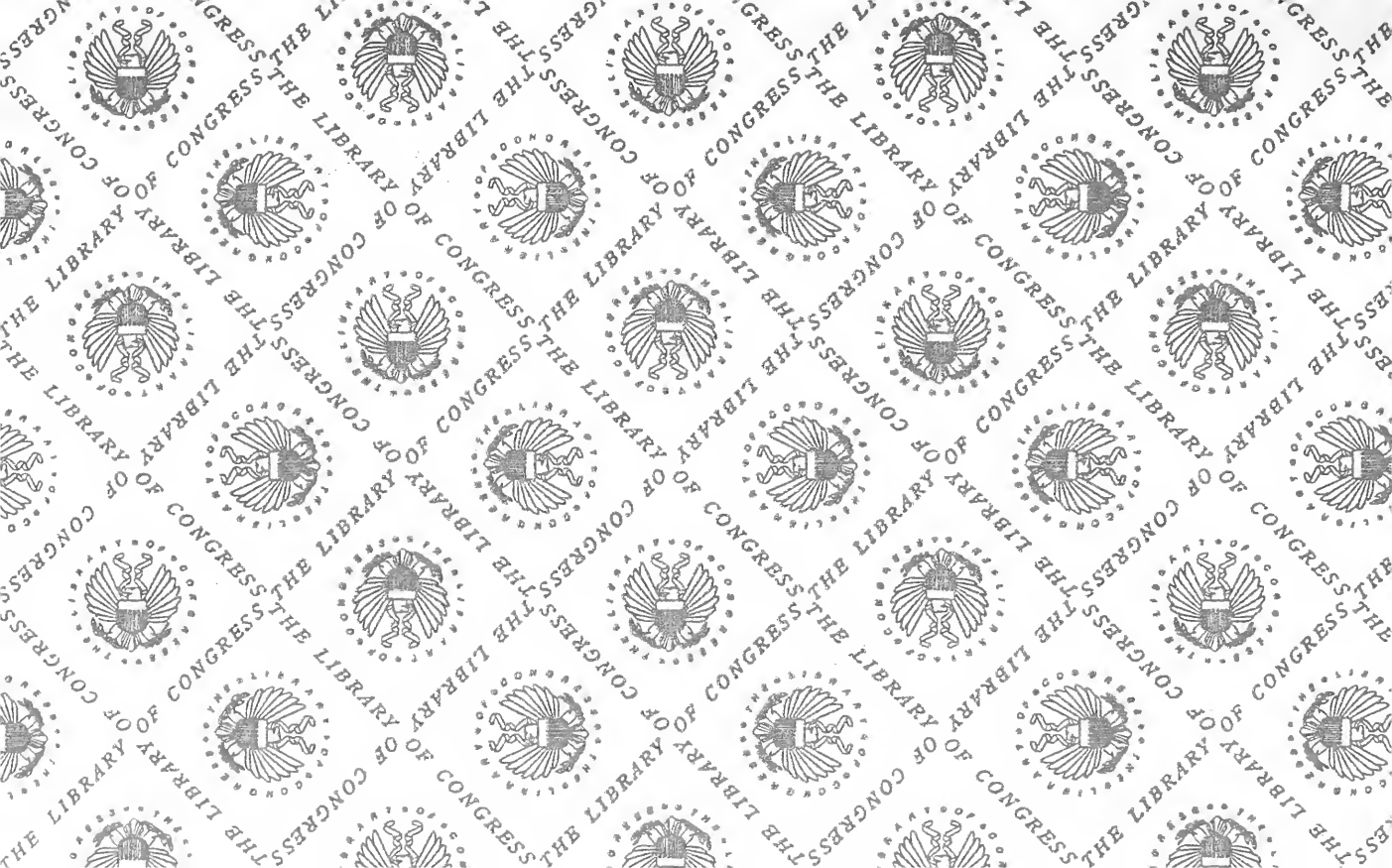
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Liberty Enlightening the World

THE CITIZEN AND THE REPUBLIC

A TEXT-BOOK IN GOVERNMENT

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INTRODUCTION

THIS volume is intended as a text-book for use in courses in Civil Government in secondary schools. It should follow, or accompany, a high school course in American History. It is an attempt to answer the demand for that which is needful and important in the "new civics" sometimes called "community civics," and at the same time to hold fast to that which is good in the old.

In introducing an educational reform there is always danger of over-emphasis; there is danger that we may not have a good thing without having too much of it. The authors of this volume, while emphasizing "community civics" and the moral purposes in teaching government, have sought to avoid a one-sided course. They believe that the schools should study the community and such "new civics" as the changing times call for, and especially that they should give attention to current history and present-day problems of democracy; but it is equally important not to neglect certain aspects of the old established order. It may be well to set pupils to the laboratory method of studying the actual life of our city communities, — how milk and water are supplied, how food is distributed, how public health is preserved, how the streets are kept clean (or dirty), how the taxes are raised and used, and how the schools are sustained. But to limit a high school course in civics to such a field of study is to commit a great wrong to young people who are under training for citizenship.

The field of civics is the world. Any course that concentrates the pupils' attention to their own village, city, or State, to the exclusion of the rest of the world, is narrow and foolish. The Constitution of the United States is still in

running order, and it is still a document worthy of the careful study of all citizens who are to live under it. The State and National Governments under their constitutions, and how these Governments are conducted, are still matters of prime importance for high school study in civil government. Teachers of civics should not be encouraged to neglect these old fields of learning.

We should seek at all times and places and in all courses of study to train the young in social intelligence, social disposition, and social efficiency. Above all, every possible effort should be made to see that young citizens in our schools should be rooted and grounded in the fundamental principles and ideals for which America has always stood, that they may come to understand the foundations of their democracy, the sources of their liberties and the means by which these liberties may be preserved, and the deep significance of American citizenship. This, let us hope, may lead these citizen-rulers of America to aspire to such national and international ideals and relationships as will be best calculated to achieve and cherish justice, peace, and democracy throughout the world. This volume is offered as a contribution to this high end.

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THE CITIZEN AND THE REPUBLIC

CHAPTER I

THE AMERICAN CITIZEN: HIS RIGHTS AND DUTIES

Who are Citizens

A CITIZEN is a member of the nation who owes the nation allegiance and is entitled to its protection. Under the Old Confederation (1781–1789) there were no citizens of the United States; the people were citizens of the several States. The United States had nothing to do with citizens; it dealt with States. The *nation* had yet to grow. The central Government, under certain circumstances, might act on behalf of a State's citizen, but it was understood that citizenship was entirely a State matter. Even after the Constitution was adopted there were doubts and arguments as to who were citizens of the United States and by what authority they became such. It was contended by those who held to the compact view of the Constitution that one could be a citizen of the United States only by having a local citizenship in some State or territory; that there was no such thing as a citizenship at large, without a local citizenship, like being a sort of citizen of the world.[1]

State Citizenship and National Citizenship

This States rights view of citizenship, expressed by the Supreme Court in the Dred Scott case, while it recognized the right of Massachusetts or Vermont or any other State to confer the rights and privileges of its own State citizenship upon the negro, asserted that these rights and privileges

[1] Calhoun on "The Force Bill," *Works*, Vol. II, p. 242.

would be restricted to the State which gave them. The State could not make him a citizen of the United States or give him a right to become a citizen of any other State. The Court asserted that a man of African descent and slave birth could not, under the Constitution, become a citizen of the United States.

Definition of American Citizenship by the 14th Amendment

It was evident that citizenship ought to be made certain; that it should be determined by some common authority. So, after the Civil War, when the slaves had been set free and the national view of citizenship and the Constitution had prevailed, in order to settle all controversy and to give equal rights to all men alike, white or black, the Constitution was amended and for the first time clearly defined American citizenship:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

This is a part of the Fourteenth Amendment and it makes clear who are citizens of the United States. No State has any right to deny the privileges of its citizenship to any American citizen, of whatever creed, color, or nationality. "Born in the United States" is broadly construed. A child of an American ambassador, if born in the ambassador's residence in a foreign country, is considered a "natural born" citizen of the United States, as also would be a child born to an American sea captain on his vessel in a foreign port. A national vessel is like "a bit of the national soil afloat." Also all children born out of the limits and jurisdiction of the United States whose fathers are American citizens at the time of the children's birth are declared to be citizens of the United States. If they continue to reside abroad they must, upon reaching the age of 18, register their intention to remain citizens and become residents of the United States and at 21 they must take the oath of allegiance to the United States.

But the rights of citizenship do not descend to children whose fathers have never resided in the United States.[1] Children born of aliens in the United States are citizens of the United States unless and until they renounce their citizenship by expatriation.

Ways of Acquiring Citizenship

An alien woman if married to an American citizen (native or naturalized) becomes thereby herself a citizen. The wife is by law a citizen of her husband's country. Therefore when an alien husband becomes naturalized his acquired citizenship carries with it citizenship for his wife, provided she belongs to the classes allowed by law to become citizens of the United States. The wife has no necessity to apply for naturalization, though an unmarried woman may do so. On the other hand, if an American woman, being a citizen, marries an alien she loses her American citizenship. By widowhood or divorce she may recover her American citizenship, by her own declaration.[2]

Citizenship of Women

Children follow the political conditions of the parents. A minor child becomes naturalized or expatriated by the parents' action. If an alien who has begun the process of naturalization should die before he is actually naturalized, his widow and children are considered as citizens of the United States, upon their taking the prescribed oaths. A naturalized citizen who returns to the country from which he came, after two years' residence there, loses his citizenship, unless he makes a declaration of his desire to retain it before the proper consular or diplomatic officer.

Citizenship of Children

Some are born citizens, others acquire citizenship. The population of a country consists of citizens and aliens. *Naturalization* is the process by which aliens become citizens. In order to become naturalized the alien applicant for American citizenship must "declare his intention" at least two years

Naturalization

[1] Act of Congress, 1855, Revised Statutes, Section 1993.

[2] A bill has been introduced into Congress (1918) allowing a married woman to act for herself and choose her own citizenship.

before citizenship can be fully acquired. To do this he must go before a Court of Record (State or Federal) in some state and take an oath to the effect that he is at least eighteen years of age and that he desires to become a citizen of the United States; he must then renounce all allegiance to any foreign country of which he has been a subject, and give up all claim to any title of nobility which he may have possessed; he must take the oath of allegiance to the United States and swear fealty to our Constitution and our laws, and he must inform the court on certain matters touching his birth, past life, and immigration to America. He is then given his "first papers," and when he has resided in the United States for five years and fulfilled the necessary qualifications as to character he is given a certificate of naturalization which makes him a citizen. By the law of 1906 the alien, in order to be naturalized, must be able to write his own language and be able to read and speak English.

Some Aliens are barred from Naturalization

Certain foreigners are prevented from acquiring American citizenship by naturalization. Only Caucasians and Africans are given the privilege, only "free white persons" and "persons of African nativity and African descent." We go to the extremes in colors, including the whites and the blacks, but leaving out the yellows and the browns. This seems like an absurd distinction in our law. Yet no Asiatics may be naturalized. No Mongolians or Malays, Chinese, Japanese, Burmese, or East Indians can become citizens of the United States unless they are born here or are permitted to become citizens by a special act of Congress. The Turk is not excluded or the Armenians, and an exception has been made in favor of the Filipinos and Samoans. Polygamists, anarchists, and certain other classes of criminals may not be naturalized; they are not considered worthy of our citizenship.[1]

[1] The Bureau of Naturalization recommends ability to speak the English tongue as a prime requisite in training the alien population in American citizenship. "It is through this medium alone that aliens can acquire a practical knowledge, both in and out of the schools, of our

CANDIDATES FOR CITIZENSHIP TAKING THE OATH OF ALLEGIANCE

After answering questions the applicants for citizenship hold up their hands and solemnly renounce allegiance to the governments of their respective fatherlands and take the oath of allegiance to the Government of the United States.

FACSIMILE OF AN AUSTRALIAN BALLOT, NATIONAL AND STATE TICKET

There are other ways of acquiring citizenship than by birth and naturalization. When the United States acquires territory it may confer citizenship upon the whole body of people residing therein. This may be done by the treaty of acquisition, or by an act of Congress. Citizenship was guaranteed by the acquiring treaty to the inhabitants of Louisiana (1803), of Florida (1819), of California and the Mexican Cessions (1848), Alaska (1867), and in 1900 an act of Congress provided that all persons who were citizens of Hawaii at the time of its acquisition by the United States (1898) should be admitted to citizenship. The inhabitants of Porto Rico and the Philippines were not made citizens in the treaty following the Spanish-American War (1898), but the Porto Ricans by an act of Congress signed by President Wilson March 2, 1917, were made American citizens, and this could be done by Congress for the Philippines at any time. The Constitution does not "follow the flag" of its own strength (*ex propio vigore*), in the way of extending citizenship over acquired peoples, but a treaty law or a law of Congress is required to incorporate a territorial group of alien people into our body politic. Congress has repeatedly conferred citizenship upon whole tribes of Indians on breaking up their tribal relations.

Citizenship in Acquired Territories

An American may renounce his citizenship and become a citizen or subject of a foreign power. "Once a citizen always a citizen" was a familiar saying a hundred years ago. It meant that citizenship was indelible, — it could not be erased, destroyed, or renounced. The idea was opposed in America as it was desired to have Europeans become naturalized in the United States. Great Britain favored the principle, as she wished to maintain a claim upon the services of her citizens.

Citizenship may be lost: Expatriation

institutions. This will lay the necessary foundation for instruction in some simple outline of American civics, the duties and the obligation as well as the privileges and immunities of American citizenship. Above all they should be taught that the supreme authority in this country is the law and that the first duty of an American citizen is obedience to that law."

Now most European nations admit the right of *expatriation*, that is, the right of a citizen or subject to renounce his country and become the adopted citizen of another country. This is agreed to by treaties between nations.

"Dual Nationality" or "Double Allegiance"

Different countries have different laws relating to nationality and allegiance. On this account the terms "dual nationality" and "double allegiance" have been used in international law. May a citizen's allegiance and service be claimed by two countries? This would seem to be inconsistent, if not absurd. As a man cannot serve two masters, so two nations may not claim a citizen's allegiance. No person can be a citizen of two countries.

But there is a conflict of laws on this subject which has given rise to much discussion. Each nation claims the right to determine for itself, according to its own constitution and laws, what class of persons shall be entitled to its citizenship and whose allegiance it will claim. Our constitution says that all persons born in the United States are citizens of the United States whether born of parents who are citizens or aliens. But Germany claims as German subjects the children of German subjects wherever they may be born, and by a German law of 1913 that country encourages Germans who go to other parts of the world to retain their allegiance to Germany, even though they may go through the form of offering their allegiance to another nation. Also the French Civil Code claims as Frenchmen "every person born of a Frenchman, in France or abroad." The French law of citizenship is not *territorial* but *national*. France applies the law of race or blood (*jus sanguinis*), while the United States applies the law of the land or the place (*jus soli*).

Thus may arise a conflict of claims. In case of an American child born in France and of a French child born in America there may be a claim of a double citizenship or double

allegiance. Both countries may claim both children. The French boy, born in America and grown to manhood, if he should go to France might be claimed and forced into military service by that country, from which his American citizenship, acquired by birth in this country, might not be able to protect him. Our Department of State recently said to a young man born of French parents in New Orleans who wished to know if his American citizenship would protect him from compulsory military service in France if he should go to that country, "It thus appears that you were born with a dual nationality, French under French law, American under American law, and the Department cannot therefore give you any assurance that you would not be held liable for the performance of military service in France, should you voluntarily place yourself within French jurisdiction."

These conflicting claims to allegiance should be settled by neighborly international agreements. Japan has passed such a law, releasing from allegiance Japanese born in other lands. It is a friendly act toward the United States, doing away with the evil of double allegiance. Each country should provide a way by which a child born in a foreign country should become a citizen of that country if he remains there. Or, a conflict might be avoided by the acceptance of the idea that "the duties of allegiance are determined by the laws of that one of the two countries in which the citizen actually is; or that a child in attaining his majority has the right to elect which of the two allegiances he will retain, and this election he should be required to make."

One Citizenship, one Allegiance

It is certain that a "double allegiance" cannot be tolerated in America. Subjects of European nations who come to this country, take the oath of allegiance to America and become naturalized citizens cannot be allowed to acknowledge allegiance to any European nation. Such "hyphenated citizens" would be dangerous in any country. Loyalty to America is expected of all.

America contends, as it has always contended, for the doctrine of voluntary expatriation and that an European who has migrated to this country and become a citizen here owes allegiance to America only. And their children born in this country owe their first and only allegiance to America. To admit a "double allegiance" in such cases would be to deny the validity of the long-standing American position against the doctrine, "Once a citizen always a citizen." A citizen of America may forswear his allegiance and become a citizen of another country. His status and allegiance would then be clear. Likewise, when aliens become citizens of the United States by naturalization they forswear their old allegiance and take on a new. They may not acknowledge both. So, when the government of Austria-Hungary forbade former subjects of that country who had been naturalized in America, to work in American munition factories, or when it was stated that under the German law of nationality (of January 1, 1914) Germans who may have acquired naturalization in America may under certain conditions retain their German allegiance, these powers made a demand that no foreign nation had any power to enforce or any right to claim. Foreigners living and working in America without having been naturalized are subject to the call of their former government only to the extent that they themselves may voluntarily recognize; no foreign government can exercise jurisdiction or in any way compel any action over aliens while they are domiciled in this country. "Every independent State has, as one of the incidents of its sovereignty, the right of legislation and jurisdiction over all persons within its territory," and no sovereignty can extend its jurisdiction beyond its own territorial limits.[1]

[1] Secretary Fish to the President, August 25, 1873, Foreign Relations, 1873; II, 1186, 1191–1192. On this subject of "Double Nationality" or "Double Allegiance," see John Bassett Moore's *International Law Digest*, Vol. III, pp. 518–551. Also report on "Citizenship of the

The Republic can recognize in its citizenship but one standard, — the standard of loyalty to *one* country, *one* government, *one* flag, *one* allegiance. This unity and loyalty in citizenship requires but *one* language, "the language of the Declaration of Independence, of Washington's Farewell Address, of Lincoln's Gettysburg Speech."

The "Children of the Crucible": the "Melting Pot"

"Americans are the children of the crucible. From the melting pot of life in this free land all men and women of all nations who come hither emerge as Americans and nothing else. They must have renounced completely and without reserve all allegiance to the land from which they or their forefathers came. And it is a binding duty on every citizen of this country in every important crisis to act solidly with all his fellow Americans, having regard only to the honor and interest of America, treating every other nation purely on its conduct in that crisis, without reference to his ancestral predilections or antipathies. If he does not so act he is false to the teachings and the lives of Washington and Lincoln; he is not entitled to any part or lot in our country and he should be sent out of it."[1]

United States," House Document, No. 326, 59th Congress, 2d Session, 1906. This Report prepared for Congress by James B. Scott, Solicitor of the Department of State, David Jayne Hill, Minister to the Netherlands, and Gaillard Hunt, Chief of the Passport Bureau, recognized the "dual allegiance and conflict of citizenship" to which the text refers, but it did not prescribe a plan for settling questions of double nationality beyond recommending a law requiring persons born abroad of American citizens who should elect American citizenship rather than that of the country of their birth to make a formal declaration to that effect before an American consul upon reaching the age of eighteen years, and to take the oath of allegiance to the United States upon reaching twenty-one. This is now required. Richard W. Flournoy, Chief of the United States Bureau of Citizenship in the Department of State at Washington, had an article on "Problems of Dual Nationality" in the *New York Times* of September 12, 1915, Magazine Section. See also, "When is an American not an American?" by Theodore Roosevelt in *Metropolitan Magazine* for June, 1915.

[1] Theodore Roosevelt, in *The Children of the Crucible.*

Citizenship and Suffrage

Who are Voters?

Voters are those who take part in elections to choose the officers of the government or who, by the expression of their opinion or desire at the ballot box, help to determine the government's policy. Voting has always been determined by the State, not by the United States. It was not until after the Civil War that any restriction was placed on the State in this respect; then by the Fifteenth Amendment it was decreed that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of "race, color, or previous condition of servitude." This was to prevent the Southern States from denying suffrage to the blacks who had been made *citizens* by the Fourteenth Amendment, and who had been made *voters* in the seceding States by the Reconstruction Acts of Congress as a condition of the readmission of the ex-confederate States into the Union. The Fourteenth Amendment left suffrage entirely to the States, but it offered a premium for negro suffrage by providing that if any State denied the suffrage to any United States citizen above 21 (except for crime or participating in the Rebellion), its representation in Congress should be reduced accordingly. Barring these provisions of the Constitution, every State is free to make its own suffrage laws.

Fifteenth Amendment

All Citizens are not Voters: All Voters are not Citizens

Citizenship and voting do not necessarily go together. All citizens are not voters. Some States have given full suffrage to women. In other States women citizens may vote in local school elections, or on certain tax questions, or for offices not created by the State constitution, while in still other States women are not allowed to vote at all. Children are citizens, but they are not allowed to vote in any State because they are still under the control of others.

Just as all citizens are not voters, so some voters are not citizens, since in some States aliens who have merely declared their intention to become citizens are allowed to vote. This

is true in eleven States,—Alabama, Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, Texas, Wisconsin. A residence requirement of from six months to two years is imposed. It would seem that a State should require a voter to be a full-fledged citizen of the United States. Many thousands of foreigners under the influence of political workers "declare their intention" merely for voting purposes without completing or really intending to complete their naturalized citizenship.

The States determine the privilege of Voting

It is important always to keep in mind that the States determine who may vote. A State could allow boys of eighteen to vote or not permit men to vote until they are twenty-five, though the loss of representation in Congress required in the Fourteenth Amendment might be imposed for such a restriction. Who may vote for President and Vice President and members of Congress, as well as for all State officers, depends entirely upon the constitution and laws of the State. The only thing the Constitution of the United States says about the suffrage (apart from the Fourteenth and Fifteenth amendments, to which we have referred) is that those persons may vote who are qualified to vote for "the most numerous branch of the State legislature." When the Constitution was made it was not expected that the people would be allowed to vote for President and Vice President and United States Senators; so in dealing with the suffrage the Constitution referred only to voters (electors) in their choice of the House of Representatives. But the rule for voting mentioned above has always held good.

Suffrage Qualifications in the States

All the States require their voters to be twenty-one years of age. Connecticut requires an educational test; there no one may vote who cannot write his name and read a section of the Constitution and laws in the English language. Some States require a poll tax, varying from fifty cents to two dollars. Most States require a registration of the voters. Some of the Southern States have required certain property and educational qualifications as a means of preventing the

negroes from voting, while by "grandfather clauses" and other devices ignorant whites were exempted from these tests. A "grandfather clause" provided that all citizens and their descendants who were voters prior to 1867, when negro suffrage was imposed, were not required to undergo the tests. The "grandfather laws" virtually violate the Fifteenth Amendment, and the Supreme Court has so declared in an Oklahoma case (1915). But these restrictions are temporary and are passing away. The tendency in all the States is toward a wide suffrage on liberal terms.

Is Voting a Right?

Nearly all writers in political science hold that voting is not a "right" but a "privilege," and it has always been treated as such in practice. Whether voting is a right or a privilege is largely an academic question of no practical importance. It does not make much difference to those who want the privilege; they insist upon it as a right. And very few of those who enjoy the privilege and would deny it to others are willing to surrender it: they look upon it and hold to it as one of their most precious rights. Technically, as a matter of political science, suffrage is a privilege conferred by the State. But a "privilege" sometimes becomes a "right," though it is hard to tell just when, and it is sometimes very difficult, if not impossible, to distinguish between the two. As a matter of fact, all our so-called rights — life, liberty, property — are held at the behest and under the authority of the State. Without having committed any crime a citizen may be deprived of his liberty (under quarantine) or he may be set in the battle line against his will and be deprived of his life in the defense of his country. His property may at any time be taken against his protest under the right of eminent domain. The welfare of the State determines it all. So those who contend for suffrage as a right very reasonably insist that those who would deny it to qualified citizens should show that the welfare of the State demands its denial.

The Democratic Basis for the Suffrage: Suffrage goes with Personality

Our democratic disposition is to look upon the suffrage not only as a political privilege but as a personal right. It belongs to the *personality* of citizens, not to their property or attainments or color or sex or creed. It is like a right of representation, belonging to every member of the nation who is a *person*. Formerly only the *interests* in the State were represented, meaning only property interests, but now we see that a man's interest in the State and its laws is far wider than his property. The poorest man in town is interested in the way justice is administered. The woman who sends her children to school may have no property she can call her own, but she is interested in the safety of the streets and in the sanitary condition of the schoolhouse. So we think of representation in the State as belonging to a person. A *person* is one who has a free will, who can think and act for himself. Children, the dependent, the demented, the insane, the idiot, the intoxicated, and convicts, — these are not allowed to vote because they are not under their own control. The law does not hold them as responsible persons; the need of guardians for them is recognized. Their *personality* is lost, their power of self-direction. Aliens should not be allowed to vote, because voting involves allegiance and is an act of membership in the State. All the other classes named, together with those who are bribed or coerced in elections, are not free; their wills are subjected to the wills of others. Every intelligent member of the community who has a will of his own and who is free to vote as he wishes should have a vote. Ignorant people may be easily controlled by others, and therefore it is not undemocratic or unreasonable to impose an educational qualification for the suffrage.

Rule for determining who should vote

Within a hundred years the suffrage has been greatly extended in all countries where there is any semblance of popular rule. In England a small property qualification still holds, but millions of men now vote in that country whose like would not have been allowed to vote a hundred years ago.

Manhood Suffrage

A century ago in our States the restrictions on the suffrage were much more numerous than they are now. Some States imposed hard property qualifications, others religious tests, so that perhaps not one person in twenty was allowed to vote. Now the proportion is about one in five, and in the "suffrage States" (where women vote) it is still larger. Under the growth of the democratic spirit of equal rights for all, these early restrictions have been removed and manhood suffrage has come to prevail in nearly all the States, — "one man, one vote."

The Argument for a Wide Suffrage

The argument for a wide manhood (or womanhood) suffrage is that voting is involved in the right of self-government; that it promotes patriotism and leads to an interest in public affairs; that it tends to remove discontent and promote a feeling of partnership in the State; that since civil and religious liberty depends upon power men have no security for their liberty if they have no power; that the suffrage is an enlightening and educational agency and that only by such active citizenship can the political virtues be developed. "It is the old truth that one learns to do by doing. There is no other way. To teach men to do their duties to the State, the only finally effective plan is to give them duties to the State to do." [1] Much legislation is concerned with bad drains, adulterated food, neglect of children, ill-ventilated workshops, dangerous occupations, drunkenness, pauperism, ignorance, and other social evils. Those who suffer from these evils should have the power of the ballot as a means of remedy. Justice may not be left with the classes that have not suffered hardships and injustice. The State needs the judgment of all.

On these democratic principles the American States have liberally admitted to the suffrage the foreign-born, the negroes, the rich and the poor, the learned and the ignorant, and all classes of men. The tendency now is to strike down another

[1] Maccunn, *Ethics of Citizenship*, pp. 81, 103, 108.

barrier, — the distinction of sex. It seems arbitrary and artificial to keep from voting, merely on account of her sex, an intelligent person who wishes to protect her property interest or to have a voice in public affairs. The movement for woman suffrage has made marked progress in recent years. Thirteen States have now conferred the suffrage upon women, and other States as well as Congress for the country at large, have the subject under consideration.[1]

Woman Suffrage

The Citizen and the Ballot

Election bribery has been one of the greatest evils of American politics. A free ballot has been called "the right preservative of all rights." If this right — the right of the people to honest elections — cannot be preserved, all other rights may be lost. To deprive the voter of the free expression of his will by bribery or intimidation is to rob him of his manhood and self-respect. It takes from him a power which has been given to him to defend not only his own rights of person and property but to promote the welfare of the State. It demoralizes and debases both the briber and the bribed. To prevent the freedom of elections by bribery or force is to strike at the very root of free popular government. To carry elections by bribery and the use of money is one of the

A Free and Honest Ballot

[1] An amendment to the United States Constitution giving suffrage to women passed the lower house of Congress in 1918.

The woman suffrage States, with the date of their granting the vote, are as follows: Wyoming (1869), Colorado (1893), Utah (1895), Idaho (1896), Washington (1910), California (1911), Kansas, Arizona, and Oregon, (1912), Montana and Nevada (1914), New York (1917). In 1913, Illinois by statute conferred national suffrage upon women. A State constitutional limitation in Illinois bars them from voting for State officers but they may vote for municipal and township officers, as well as for president and members of Congress. That is, they may vote for candidates for offices not created by the State constitution. In 1917 the same kind of suffrage was conferred upon women in Ohio, and Michigan, and in Arkansas women were given the right to vote in party primaries. Full suffrage for women throughout the country seems to be a question of only a short time.

worst forms of anarchy. If elections and law-makers and judges are to be bought the laws will be no longer binding on the people. All respect for law and authority will be destroyed and the very foundations of the State will be undermined. If the rich may buy the poor, then the poor (if they have the power) may loot the rich, and this is anarchy.

What would a class of boys think of a game of baseball if it were known that the umpire or the pitcher of one of the teams were bought to "give the game away"? What would the bleachers do? No self-respecting "fan" would watch such a game through; it could have no possible interest to anyone save the guilty traitors who had sold out the game. If it were known that the noble game of baseball had ceased to be a *clean game* and that umpires and pitchers were bribed to sell the game out, how long would the American public care anything about their national sport? The game would be broken up. Is not an election of more serious moment than sport? The game of politics is more vital than a game of ball. In elections the voters are like umpires and certainly the people should be as jealous of their national interests as they are of their national game, and just as quick to demand honest voting as honest playing. It seems passing strange that there are people yet who are strict and upright in private business or in sport, who are loose and flabby and immoral when it comes to the most vital interests of the State.

To prevent bribery and secure honest elections the Australian system of voting has been devised. This involves several features:

The Australian System of Voting

1. All ballots are printed and distributed by public officials at public expense.

2. Each ballot contains the names of all candidates that have been nominated by any party or by petition of any group of citizens. The party committeeman must certify to the proper State officers the names on each party ticket a

certain number of days before the election, and the election officers must certify to the genuineness of the ballot when it is given to the voter on election day. This they do by indorsing, or writing their names on the back of the ballot.

3. Ballots may be obtained on election day only within the voting places and from the election officers. They are to be marked in private in the election booth; they may contain no distinguishing mark that might enable a voter's ballot to be identified when it is being counted, and it must be so folded as to conceal the face of the ballot when it is handed to the election officer to be put into the box. The essential point in these requirements is that the voter shall not only have the privilege of voting in secret but shall be required to do so.

4. Special provision is made to prevent ballots being lost or stolen. No one is allowed to have a genuine ballot outside the election booth and all electioneering is forbidden within a certain distance of the polling place. Sample ballots, of different colors from the genuine ballots, are posted on the outside for the instruction of the voters.

The Slip Ticket Method of Voting

These provisions of the Australian system, usually accompanied by registration laws and provisions for punishing bribery and other violations of the election laws, came into use in America about 1888, Massachusetts leading off in that year and Indiana and six other States following in 1889. Now only two States, South Carolina and Georgia, retain the old system of voting. Prior to 1888 slip tickets were used. The party managers furnished their own ballots, or candidates could print and distribute ballots to suit their own interests. Mixed tickets were printed under headings that were misleading, and a voter could hardly be sure of getting a "straight party ticket" when he wanted one. The bribed voter was accompanied to the voting window by some party worker or interested candidate and the exposed ballot which had been prepared for him was handed to the election officer. Flagrant bribery was common. The employers of large numbers of

men sought to control their voting. Party rivalry was strong, wealthy men had some special interest in the result of the election, large salaries were at stake, and all these influences led to the raising of large campaign funds to corrupt the ballot. So the State in self-defense had to protect the voter and try to get fair elections by some form of the secret ballot. The provisions of the Australian ballot have been evaded in some ways by lawless men and unscrupulous political tricksters, but it works vastly better than the old system.[1]

The "Party Column Ballot" arranges the candidates in parallel party columns, each party having a column. At the head of the column is a party emblem. In some states the Democratic emblem is the Rooster, the Republican emblem, the Eagle, the Prohibition emblem a Rising Sun, the Socialist emblem a Hammer and Anvil.

The "Office Column Ballot" arranges the candidates in groups under the title of the respective offices, all candidates for each office being grouped in alphabetical order in the same column.

Two Kinds of Ballots: "Party Column" and "Office Column"

The party column ballot is favored by party managers to encourage "straight" voting. If a voter, using this ballot, wishes to vote a straight party ticket, he can do so with a minimum of effort by two strokes, merely making his cross-mark (x) within the circle containing his party emblem. He "votes for roosters and eagles." But if he wishes to vote a "mixed" or "scratched" ticket, trying to pick out the best men by choosing some candidates of one party and some of another, he must then not put his cross-mark (x) within the party circle containing the emblem, but he must make his mark in each of the little squares opposite all of the candidates for whom he wishes to vote. If he blots or blurs his ballot or gets upon it in any way any sign that may be taken for a "distinguishing mark," his ballot will be thrown out. So he takes the easiest and safest way, refuses to take the risk

[1] See Woodburn's *Political Parties, and Party Problems*, pp. 349–50.

of trying to "scratch," and "votes the ticket straight." This is not very intelligent voting. The office column ballot, on the other hand, encourages more intelligent and independent voting by making it just as difficult to vote a straight ticket as a mixed ticket, since the voter must always pick out for each office the man for whom he wishes to vote.[1]

Straight Voting

In some cities voting machines are used to facilitate voting. With these the voter, instead of making his cross marks on a "blanket ballot" in the booth, pulls the levers or knobs on a machine and thus registers his vote quickly for the candidates of his choice, and the machine at the same time registers the total vote cast at any hour of the day for each candidate, so that the result of the election is known as soon as the polls are closed. The machines are expensive and complicated, and if they get out of order the voting may be seriously blocked.

Voting Machines

When a voter comes to his polling place to vote, he must pass the challengers and the election sheriffs. The challengers are party agents who stand at the polling place all day to prevent fraudulent or illegal voters of the other party from voting. They are paid out of a party fund. If a voter is challenged he has to "swear in" his ballot or make affidavit that he is a legal voter. The sheriffs are public officers, appointed to preserve order at the polls and to arrest offenders. They are often appointed through party influence and are under the direction of the Judge of the Election board, who is usually a partisan official, though he ought not to be. After passing the challengers and election sheriffs the voter comes into the room of the election board; he gives his name and address, and if they are found in the registration books he is given a ballot. He then goes into a booth and marks his ballot for the party or men of his choice. If he spoils his ballot he may be given another. The ballot is then folded and handed to an election official, who places it in the proper "ballot box." The polls are closed at an hour fixed by law and the votes are counted.

How to Vote

[1] For the reform proposed by the short ballot, see pp. 45 and 46.

The Citizen and the Party

Independence vs. Party Allegiance

What should be the attitude of a citizen towards his party? Should he give his party unfaltering allegiance? Or should he recognize no party relation or obligation whatever, merely voting in his own independent way, regardless of all party claims? It is obvious that no fixed rule can be laid down for citizens to act by in this matter. A citizen's relation to his party will depend much upon the habit and character of his mind. Some men are naturally more partisan, some naturally more independent than others. Patriotism and good citizenship may be consistent with both attitudes, with that of the partisan or that of the independent. It is safest to avoid an extreme attitude either way; the better citizenship may be found in the golden mean. Since parties are the agencies by which we are governed (see pp. 218–233), it would seem that if a man wishes to make his weight tell and to count for much in politics and public affairs and really take part in his own government he should belong to a party and use all his influence for good government within his party. If he does not do so he will then be reduced merely to a choice between what other men arrange for him.

On the other hand, some men, either from their positions or dispositions, feel that they cannot coöperate actively with, or pledge their fealty to, any party. They wish to acknowledge no party ties, but to act as judicial umpires between parties, voting as readily with one party as with another, as they think the interests of the country may demand. They wish to stand in the middle of the "see-saw," giving the tilt first to one side, then to the other. These independent voters have been called "Mugwumps," a nickname that was applied to them in 1884.

To which of these two classes a citizen should belong, every man must determine for himself. He must define for himself the limits of his party loyalty. Some men act independent

of parties from good motives, some from bad motives; some from public interests, some from selfish and personal interests. If we recognize the party as a beneficial agency in popular government, whether "bolting" and opposing the party is ever justifiable depends altogether upon the reasons that are offered. It is obvious, whatever the reasons, that some men will approve the bolting and some will condemn it. If the reasons for bolting one's party are trivial, petty, selfish, ignoble, the bolter will be condemned; if his reasons are good and sufficient he will be approved. Who is to judge the reasons that are given? Manifestly, every citizen must answer for himself to his own conscience and judgment. According to the reasons that he gives, according to the judgment wherewith he judges, shall he be judged.

A Growing Spirit of Independence

It is evident that parties are becoming more amenable to popular control, to the opinion of the "rank and file." Large and growing numbers of our citizens are disposed to assert their independence of party control. Party managers and hide-bound partisans are disposed to look upon a party as a disciplined army, whose voters are expected to act like machines or unthinking soldiers and vote at the word of command. Many thousands of voters are no longer willing to be managed or "bossed" on this principle. It should be understood that a party exists for its voters, not for its managers. The party is not an end in itself; it is a means to secure the common ends that its voters have in view. It is not merely an organization for carrying elections and getting offices for the party workers. The party should stand for principles and for policies in harmony with these principles. When it ceases to do that it has no claim on any citizen's support or allegiance. It cannot exact pledges to obey someone's orders to follow an unknown course. Party men may well recognize the usefulness of parties and, believing in their own principles, they may wisely adopt the party means of reducing these principles into practice; but with the spirit

of true independence they hold their political independence above party success or party interests, and they will follow their convictions and their sense of the public welfare against the crooked work or the temporary decisions of the party organization. No young man or woman should allow a party to commit him or her to a course which is deemed dangerous to the interests of his city, his State, or his country.

"Let it be known that you are interested in the success of the party. Asking nothing for yourself, take a hand in shaping the party policy and making nominations, being guided by public interests rather than personal ones. If, against your protests, they make bad nominations, *bolt them* and return to the charge. Keep standing up for men and things that are honest and of good report." [1]

"Party is always to be subordinated to patriotism. . . . When you are angrily told that if you erect your personal whim against the regular party behest you make representative government impossible by refusing to accept its conditions, hold fast by your conscience and let the party go." [2]

Some Obligations of the Citizen

The citizen's duty as a juryman, while not so frequent or constant, is sometimes more important than his duty as a voter. The Jury in the court are the twelve men selected according to law who are sworn to hear the evidence in a case and to bring in a true verdict according to the evidence laid before them. This is the petit jury or trial jury. The grand jury, consisting of other men appointed by the Judge or Jury Commissioners, investigates wrong doing or alleged crime and brings into court an indictment against the accused if the evidence is thought to justify an arrest and trial.

Jury Service

[1] Washington Gladden, *Century Magazine*, vol. vi.

[2] George William Curtis, *Orations*.

See also the chapter on Civic Publicity and the Voter in A. D. Weeks's *The Psychology of Citizenship* in the National Social Science Series (1917).

Jury service is sometimes a hard and disagreeable duty and most busy men shrink from it, making all sorts of excuses in order to get off. Inferior men who are willing to take a two-dollar-a-day sitting job, are about the court houses ready to do the work and the consequence is we have our "professional jurymen," whose verdicts are unsafe and unreliable and who are sometimes "tampered with" through the influence or bribery of interested parties.

All citizens are liable to be summoned for jury duty, and if the most competent men are to be excused the juries will be made up in large part of those less fit to perform intelligent and honest jury service. If justice is not done in court, the law is a failure and the law-abiding habit is undermined. If honest men will not help to administer justice their places will be taken by those much less desirable. A civic investigation committee in a large city spoke recently as follows: "No child should be permitted to leave the grammar school until he has had thoroughly instilled into him the strong sense of his obligation to the State to set aside all prejudice and private interest and act as juryman in any case in which he may be summoned. He should be taught that this obligation is sacred, and that its performance is the highest kind of public service."

Universal service for military duty may also be an ideal of citizenship. In time of need the individual citizen is to sacrifice himself for the good of the whole community. To determine when the need exists and what the extent of the sacrifice shall be lies not with the citizen himself but with the community or the State or organized society. No one contends that taxes should be voluntary; that each citizen shall be allowed to decide for himself whether he shall pay or when and how much. Taxes are determined for him by the law of the land. They are to be imposed on all alike, according to some fair rule. If *paying* to support the State is compulsory, so should *service* be. All should bear the burdens and meet the needs of the nation alike, the willing and the unwilling, the

The Citizen and Military Service

patriotic, and the unpatriotic. In time of national need, of emergency and war, all should be in service and under direction, some doing one thing, some another; some in command, others under obedience. This is in harmony with democratic equality, that there should be no favors, no exemptions, no excuses, no slacking or shirking; but that all alike, high and low, "prince and peasant, plutocrat and pauper, shall serve their country together side by side, wearing the same uniform, submitting to the same discipline, showing the same triumphs or dying the same death."[1] It is this spirit that will unify us and make us a *nation.*

Power of Public Opinion

Law Enforcement and Public Opinion

Public opinion, or public sentiment, is the chief factor in the enforcement, or non-enforcement, of law. One of the greatest evils in American life is the deplorable lack of efficient, vigorous, and constant law enforcement. America holds rather a unique position among nations in this respect. There were ninety-six lynchings in America in 1914. Ours is the only civilized country on the globe in which men are burnt alive by lawless and fiendish lynchers. Of course, to the extent that such savage and horrible practices are tolerated, we are not civilized, but barbarous. The community which practices or condones such lawless and public murders degrades itself and brings a reproach upon the State. It is difficult in America to execute a murderer according to law, but men may be put to death in every other conceivable way, by all kinds of homicides, by the so-called "unwritten law," by criminal negligence, by reckless driving on the streets, by avoidable fires and accidents, by awful steamship disasters, by carrying deadly weapons, by saloon brawls and drunkenness, and in other ways. Most of these things come from lack of law enforcement. It frequently happens that when a

The Evils of Mob Law

Cheapness of Life in America

[1] *The American Democratic Ideal*, by Brooks Adams in the *Yale Review* for January, 1916.

guilty murderer has been convicted and executed a sickly and maudlin sentiment in the community seeks to make a "hero" out of him and thousands of people begin to condemn the officers of the law for his execution. This leads to a loss of respect for all law. Whether capital punishment should be inflicted by the State is a debatable question. A growing public sentiment is coming to oppose it. But this has no bearing on the matter of our respect for the law and its enforcement.

Lack of Respect for Law

There are easy habits of mind among Americans toward the crimes of bribery and political corruption. One of the saddest things in our civic life is to find men who are looked upon as decent, law-abiding, intelligent citizens, condoning vote-buying or bribe-giving to legislators or city councilmen and deploring and opposing the indictment and prosecution of the wrongdoers. Commercial and political bribe-givers commit the most serious of crimes. They corrupt public officials, a crime which tends to undermine the very foundations of the State, leading to the ultimate destruction of democracy. These "respectables" in the community, instead of rising in righteous wrath against graft, bribery, and political rottenness, begin to criticise and condemn the prosecution of the wrong. So the criminal is made to feel that public sentiment does not condemn him, that a jury will acquit him, and that he can commit such crimes with impunity. If that is to become our common civic spirit then "we must bid farewell to civic virtue and in time bid farewell to republican institutions and civic liberty." [1]

The Delay in the Courts

One of the prime causes of this lack of respect for law comes from the law's delay. The procedure of our courts is clumsy, technical, and slow. Cases are dragged out to an intolerable length, — especially if one side has money by which it can "stave off" a decision until public sentiment cools off. Shrewd lawyers are able, by means of postponements, new trials,

[1] See *Civic Progress and Reaction in the West*, *Outlook*, August 4, 1915.

appeals to a higher court, and other delays, to prevent a final decision almost indefinitely. A murderer or briber may be under trial years after his deed was committed and has almost been forgotten, and when public attention is attracted by other murders and other crimes. Court procedure is complicated and technical. Technicalities are constantly made use of to avoid conviction. A short time ago in Missouri a case was thrown out of court because a copyist had accidentally omitted the word "the" from a document. The meaning of the document was perfectly plain, but it was technically incomplete. Such legal decisions do not appeal to the common sense of the average man. We are far behind Great Britain in the matter of legal procedure, and leaders of the bar are urging reform, which may be brought about before the lapse of many years, — that "justice be done speedily and without delay," as was promised in the Magna Charta several hundred years ago. Above all, the length of the case should not be in proportion to the length of the purse of one of the litigants. A poor man cannot stand the law's delays; a rich man may be better able to do so.

The Citizen and the Community

It was Patrick Henry who said, "Eternal vigilance is the price of liberty." It is, also, the price of good government. The government of any community always depends upon the moral quality of its citizens. Mr. Bryce has named three obstacles to good citizenship: (1) Indolence or apathy on the part of the voter; (2) excess of party spirit; (3) the tendency of the average citizen to place self-interest before the public interest. A community which elects incompetent and untrustworthy officials and is indifferent to the kind of government it gets, is very certain to get bad government. "If you elect a rogue to represent you he will represent you." The machinery of government will not count for much; it all depends upon the men in charge. Capable and upright men

The Citizen and the Community

with bad machinery may get good results, while bad men with good machinery will always produce bad results. An intelligent and alert public opinion is the chief reliance. Our government is what its citizens make it. Bad laws or the failures of good laws are but the work of bad men, or their triumph over the good. So the moral sense of the citizen and the moral life of the community needs constant cultivation and activity. Officers, prosecutors, judges, and juries will not convict people of crime for doing the things that are the community habit and practice.

To develop this community life, to make it worthy and progressive, the citizen needs public spirit. This public spirit will help him to overcome indolence and lift him above party and above himself and above his own private affairs. We hear much of patriotism, and we are led to think of the patriot only as a brave soldier who is fighting or dying on the battle field. But patriotism is only another name for public spirit. The patriot may be ready to go to war, and on the field of battle he may pay the "last full measure of the patriot's devotion." The true patriot will not only defend his rights but he will fulfil his duties. His patriotism will assert itself not only in times of excitement, in a crisis or in an emergency, but in the everyday duties of civic life. To obey the laws and keep out of jail and out of the hands of the law officers, to pay one's taxes because he is compelled to, this is a low measure of patriotism. The true patriot in the community will stand ready to contribute time and money to the public good. He will strive to have the taxes justly levied and honestly expended; he will strive for better roads, cleaner streets, better sanitary regulations, better schools, a better enforcement of the law. He will look upon public office as a public trust, to be sought not for its pay but as an opportunity for public service. He will seek to know something of the institutions of his country and their workings, of the needs of his community and their management, of the laws and their

Public Spirit and Patriotism

requirement, of public officers and their duties. The good citizen will seek to place his country's interest and his community's interest above party or class or sectional or selfish interest, and he will be willing to take trouble or even tedious pains for the well governing of the country and the community in which he lives.

With this civic spirit the citizen will seek to promote the progress and improvement of his community in all its varied activities. A good social spirit will be cultivated, and all social forces will be strengthened which make for the better life of the community. All the agencies for public education in health, morals, recreations, and vocations will be encouraged. Parents, homes, churches, clubs, commercial bodies, the school children, will all coöperate to help develop a community sense, a community understanding, and a community will. The policeman will come to be looked upon as our representative not merely to keep order by arresting offenders and to keep the small boys in the neighborhood under restraint; but he will catch the spirit of social advance and be our leader in social self-control and community self-respect.

Civic Activities and a Community Sense

As an illustration of the new civic spirit, attention may be called to the organizations of the *Boy Scouts*, the *Boy Citizens*, the *Boy Police*, by which young boys are coming to learn good citizenship by actual practice of it and by seeing the need of public spirit in the actual life of the city. Boy Citizens and Boy Police have been organized and have loyally given this worthy pledge:

Civic Spirit in the Young

"I promise on my honor,

"1. To do my duty to God and my country and to obey the law.

"2. To be honest, to be trustworthy, to be loyal, to be helpful, to be polite, to be obedient, to be brave.

"3. To do what I can to prevent swearing and vulgar language in public streets and public places.

"4. To prevent boys from breaking windows and street lamps and from defacing buildings and sidewalks with chalk.

"5. To prevent boys from smoking cigarettes and playing crap.

"6. To prevent boys from engaging in dangerous or unlawful playing.

"7. To prevent persons from placing encumbrances or obstructions on fire escapes.

"8. To prevent the mixing of ashes, garbage, and paper. To see that garbage cans are kept covered, that ash and garbage cans are promptly removed from the streets when they have been emptied, and especially to do this at our own homes.

"9. To request persons to keep the sidewalk and area way in front of their buildings clean and not to throw refuse into the street."

This is the finest training of young boys for citizenship. All the children in our public schools are citizens. They are "not merely going to be citizens, they are citizens now," with rights, privileges and duties of citizens. It is their duty to show their sense of citizenship and to manifest their interest in and contribute their part toward good government, good laws, and good order. They are under obligations to keep secure these blessings in the home, in the school, in the community.

There is no better place to teach a boy to be straight and honorable than on the playground with his comrades. There he may learn the true spirit of the game which he will need for good citizenship in after years, — not by instruction and precept and preaching but by the community spirit and the life of the game. He expects no one to cheat him, and the "whole bunch" will be down on the boy who does not play fair. So "he will establish standards of conduct which we must maintain in the community and particularly in our great cities. If there is one thing that we need more than another

it is the constant emphasis among our citizens of that spirit of fair play, that willingness to give and take, that generosity in defeat and that lack of assertiveness in victory which we identify with true sport, and which is learned best of all in childhood upon the playground." [1]

TOPICS AND QUERIES

1. Why should America not tolerate "hyphenated citizens" and "double allegiance"?
2. Debate: "Resolved that no State should be allowed to admit aliens to the suffrage before their naturalization is completed." What States do so?
3. Do not the citizens of the United States owe a double allegiance to the State and to the United States? Have these allegiances ever come into conflict? Which is paramount? Why? Which came first historically?
4. Debate: "Resolved that the Nation rather than the States should determine who should be voters." How did the States get this power?
5. Debates: (1) "Resolved that the suffrage should be extended to women throughout the United States." (2) "Resolved that the suffrage should be restricted rather than extended." (3) "Resolved that voting should be compulsory."
6. Which is the more important, the citizen's duty to obey the State or the State's duty to protect the citizen?
7. Show that the "office column" ballot is better than the "party column" ballot.
8. How may a good civic spirit be cultivated on the playground?
9. What agencies and influences can you name for promoting better citizenship?

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CHAPTER II

PRESENT DAY PROBLEMS IN A DEMOCRACY

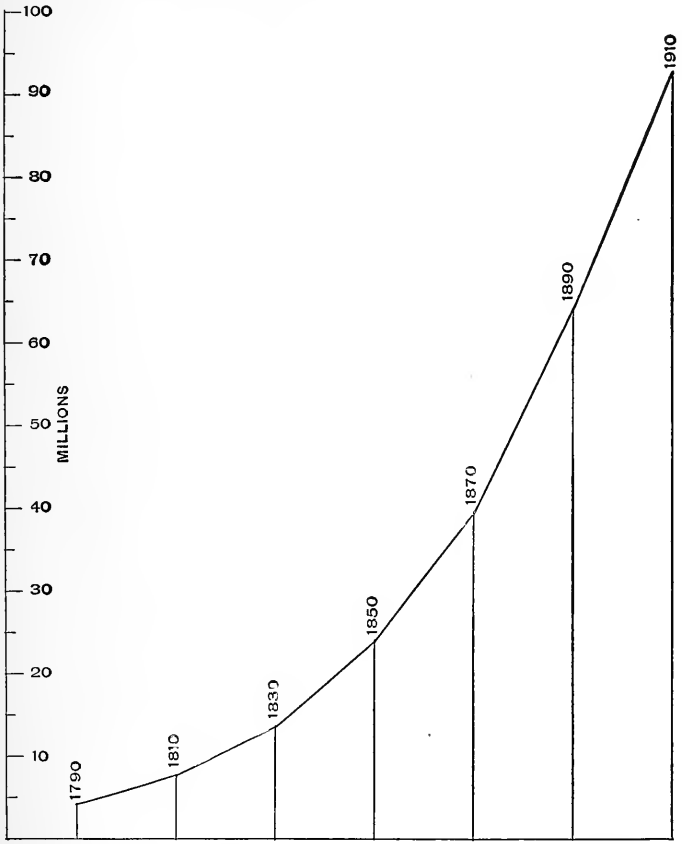
New Conditions Bring New Problems in Government

Government is a changing thing. Its principles of justice, equity, order, fair play, and equal rights for all do not change. Truth and righteousness abide, but the methods and means, the instruments and institutions and policies of government by which truth and justice and righteousness are obtained, must change from age to age. Men must adapt themselves to the changed and changing circumstances of their lives not only in material things but in government.

Changes since 1787

The changes in the life of mankind and among the American people since 1787 have been so many and so marvelous that it may be almost said that we are living in a different world. Judged by the circumstances of his life and the progress of the world, George Washington lived more nearly in the times of Abraham than in those of today. Washington never saw an automobile, or a trolley car, or a railroad, or a telephone, or a telegraph, or a steamship, or a writing machine, or a mowing machine, or a voting machine, or a threshing machine, or a sewing machine, or a great city, or a great factory, or a great printing press, or an elevator, an asphalt street or a macadamized road, or a public school, or an electric light, or a lucifer match, or a gas jet, or a gas range, or a two-cent stamp. All these things have changed the face of the world and the way men live. Is it not to be expected that they should change also the ways and means by which men are governed?

In 1787 the thirteen little commonwealths that fringed the Atlantic, east of the Alleghanies, had about four million people,



A diagram showing the increase of population in the United States since 1790. Since the 1910 census the population has now reached over 110 millions.

and most men seriously doubted whether a single republic could endure for any length of time over so vast a stretch of territory as from Massachusetts to Georgia. In 1918 a united

republic of forty-eight states from the Atlantic to the Pacific governs more than one hundred millions of people. The railroad, the telegraph, the telephone, the post office, unite them in business interests, and enable *one* government to bind them together as a *nation*. While Washington hoped and worked for a firm and lasting union, he looked forward to nothing like this. *Then* nearly all the people lived in the country, without good roads or good schools or adequate means of travel and communication. Now nearly half the people live in cities, with quick communication and highly organized trade and industry, under "sky scrapers" and amid great mills and factories and stores.

Primitive Social Conditions compared with Modern Complex Life

The country is big, business is big, our enterprises are big, our problems are big, and the government must be ready for big things such as the men of 1787 could not have dreamed of. With our land reaching at that time only to the Mississippi, Jefferson thought there would be enough for the people for a thousand years to come, and Fisher Ames said that it would take ages to settle it and only the Lord knew how it could ever be governed! Could anything be more absurd than to think that even the wisest men in the world in those simple and primitive times could lay down a fixed and rigid constitution to govern a growing nation for even a century to come? The constitution had to be changed and enlarged by liberal construction and by new standards and understandings, to enable the nation to meet new conditions and unforeseen problems. Otherwise it would have broken down as the Old Confederation did. As new needs arise or new evils appear our minds cast about for new plans or devices to meet the call of the times. It is common sense to do things in the best way and the Constitution was designed to promote and not to prevent the best methods in government.

As we see one of our great and efficient threshing machines we smile when we hear that somewhere in Asia men are still threshing wheat in the same old way of two thousand

New Instruments and Means of Government are devised like new Machinery

years ago, beating out the grain with the flail and throwing it into the air that the wind may separate the chaff from the wheat. We think how unprogressive men are who consent to live in that way. We should be just as ready to adopt (and adapt ourselves to) new methods and forms and *inventions* in government, if they can be proved to be better than the old. This would be quite in harmony and not at all contrary to the conduct and principles of the fathers. They overthrew the government of the King when they found that government was against their best interests. For a while they tried the experiment of the Confederation, but when it proved a failure they overthrew it and set up a new Constitution although they encountered such opposition that they were almost unable to bring about the change.

Men do not invest much in *machines* until they have been tested and tried out. They experiment with a new machine to find out whether it will work, or whether it is really useful. If the machine "makes good," sensible men will buy it and use it. They will not hold on to old ways merely because they are old nor reject new things merely because they are new. Wise men are open minded and seek to learn about new things. It is just so in government. Men experiment in government just as they do in mechanics. It may cost something, but there is no other way of making any progress. If a law or an institution or a constitution works badly it must be abandoned; if a new proposal in government works well it should be adopted. This is the old American Anglo-Saxon historical method of making progress in government which the world has witnessed for two thousand years. A self-governing people are not to be bound down by fixed rules of action for all time, but they must be free to apply at will this particular remedy for this particular evil.

Our Federal system of government in America is especially well adapted to experiments. Our States have been called

The States as Experiment Stations

"political experiment stations," because a political proposal may be tried out in a State while other States look on, and if it works well they may adopt it, while if it works badly no great harm is done except to the one small community and that not for long. Maine and Kansas try prohibition of the liquor traffic; Oklahoma the guarantee of bank deposits by the State; and the other States watch the result and reject or adopt the experiment accordingly. Oregon has taken the lead in recent years as a "political experiment station" in America. What is known as the "Oregon system" includes direct legislation by the Initiative and Referendum, the Recall, the direct primary for nominating officers under the Australian ballot, a corrupt practices act, home rule for cities and a scheme for the popular election of United States Senators used before the adoption of the Seventeenth Amendment (see Appendix). These are experiments in radical democracy and the feature of direct legislation is to a large extent the substitution of direct democratic government for republican representative government.

The Oregon System

The Initiative and the Referendum

The Oregon experiment that attracted the most attention and which has been adopted by several other States is the *Initiative* and *Referendum*. The Initiative and Referendum go together in one system. The system is not new in Oregon. In Switzerland, the land of its origin and the most democratic country in Europe, it is an old and well-established institution. It provides a method or process by which laws may be made, or prevented, directly by the people themselves, — that is, *direct legislation* by a vote of the people instead of indirect legislation by the representatives of the people in the legislature. For this reason the system is denounced as overthrowing "representative government." It is an approach toward pure democracy by which the people govern themselves.

The *Initiative* and *Referendum* are designed as a check or remedy for the evils and shortcomings of legislatures, — to

push forward reforms which the people want and to prevent the enactment of laws which they do not want. In early days the people reposed nearly all power and responsibility in representative legislatures. The governors were given very little power. The people trusted to responsible, well-trained, and able leaders, — Washington, Hamilton, Jefferson, Madison, and others, in State and national councils. As legislative abuses arose and representative assemblies made or prevented laws really contrary to the will of the people, the people lost confidence in their legislative bodies. They gave the governors the veto power to check the legislature, and Jackson, as a "tribune of the people," enlarged the presidential veto to prevent Congress from doing what he was convinced the people did not want done. As the people have become more capable of making decisions they have sought to take it upon themselves to say what their legislatures shall or shall not do. It has been this spirit and growth in democracy that have given rise to the Initiative and Referendum. It comes from a trust in the instinct and common sense and conscience of the whole people.

Causes for the Rise of the Initiative and Referendum

By the *Initiative* the people may propose, or initiate laws and have them submitted to the voters for acceptance or rejection. If a sufficient number of the voters petition the legislature to submit to the people a law, or policy, that body has no option in the matter.[1] This petition becomes a lawful demand, an "imperative mandate," a term used to express the compulsion by which the legislature acts, by which the legislature is bound to let the people decide whether they will have such a law. Thus the legislature is prevented from postponing or defeating a measure which the people may want.

How the System works

By the *Referendum* (meaning *it must be referred*) before a bill may become a law the legislature is bound, if a sufficient num-

[1] In Oregon only *eight* per cent of the legal voters are required for an Initiative petition and only *five* per cent are required for a Referendum petition.

ber of the voters petition for it, to submit the measure to the voters to see whether or not they approve. If they approve, the measure becomes a law; if not, it is defeated. Thus the legislature is prevented from enacting laws which the people do not want.

The advocates of these reforms say that it is not "representative government" which they oppose, but "mis-representative government"; that legislatures often abuse their trust; that they represent powerful moneyed interests instead of the people; that bribery operates and the "lobby" controls. So they advocate the Initiative and Referendum in order that the people may control their legislatures, and (by the Initiative) compel them to do what the people want and (by the Referendum) to prevent their doing what the people do not want.

Under the Initiative and Referendum the drafting of bills is attended to by expert legal officers. The people merely vote upon the broad policy, as for instance, "Will you have woman suffrage?" "Will you establish more normal schools?" "Will you prohibit the liquor traffic?" "Will you have local option?" "Will you try the single tax?" etc. In Oregon as many as thirty proposed laws have been accepted by the people at general elections within the last few years and many more have been rejected.

Old Forms of the Referendum

The Referendum may be optional or compulsory, State-wide or local. The constitution of a State may leave its use to the option of the legislature or it may make it compulsory in all legislation of general public interest and on certain local matters. Certain forms of the Referendum have existed for a long time in many of the States. Constitutions and constitutional amendments have usually been adopted by the Referendum. Local option elections, — voting a county or city "wet" or "dry," — locating county seats, and deciding whether a town shall become an incorporated city, are other old forms of the Referendum. Subsidies for new railroads

and taxes for bridges, school houses and other public improvements may also be decided in this way in some of the States.

Advantages Claimed for the Initiative and Referendum

The advantages urged by the advocates of this method of direct legislation may be briefly mentioned:

1. It brings power directly to the people who may be more safely trusted than the legislatures.

2. It is a good means of political education. The people are aroused to take an interest in politics and government. Public arguments and appeals are made for and against a measure; school house meetings and debates are held, with able speakers on each side; editors and clubs discuss the question. So the people are aroused and led to consider their public interests and to think of measures, principles, and policies and not merely of the interest and success of certain candidates.

In Oregon the State prints a public pamphlet containing a statement of the proposed measure in which its advocates and opponents have a right to insert a brief argument not to exceed, say, two thousand words. Those who insert the argument must pay for the actual cost of paper and printing. A copy of this pamphlet is sent at public expense to every registered voter of the State not later than fifty-five days before the general election and twenty days before any special election. That would be a much greater task in a very populous State.

Objections to the Initiative and Referendum

Several objections are urged to the Initiative and Referendum. The objectors urge the following:

1. The system abandons the representative republican form of government which our fathers established. A test case was brought before the Supreme Court in an effort to

show that the Initiative and Referendum in Oregon violated the constitutional guarantee of a republican form of government which the United States is bound to safeguard in every state, but the Supreme Court held this contention to be unsound.[1]

2. The people will constantly be kept voting upon measures. Busy men or women cannot afford the time. Only professional agitators and cranks, say the opponents of the system, can give up the time required to attend to the necessary petitioning, arguing, and voting.

3. So many questions are submitted at once that the people cannot vote intelligently. National politics and the personal interests of candidates divert the people's attention. The people are more interested in men than in measures, and while they will come out and vote for their friends or some leader whom they admire, they will neglect important policies or have no concern for them. How can the people, it is asked, be "educated" on so many questions at once or be expected to vote intelligently upon questions, many of them technical and abstruse, where expert knowledge is needed? They will be confused by the conflicting arguments, and in consequence will vote in large numbers in the affirmative regardless of the merits of the measures.

Can the People decide questions intelligently?

The experience in Oregon does not seem wholly to sustain this view. The people there have repeatedly rejected a policy, like woman suffrage, and then upon reconsideration have adopted it. They have not appeared to act rashly or rapidly, and are not so radical as some of their leaders. In 1914 at the general fall election twenty-nine measures were referred to the people, including such radical proposals as the single tax, the abolition of the State senate and of capital punishment, State-wide prohibition, an eight-hour day, the problem of unemployment, a non-partisan judiciary, municipal wharfs

[1] Pacific States Telephone and Telegraph Co. *vs.* Oregon, February, 1912.

and docks, and proportional representation. Only four measures passed. The people vetoed the other twenty-five. Experience goes to show that the people when in doubt vote *No*. They must be convinced.

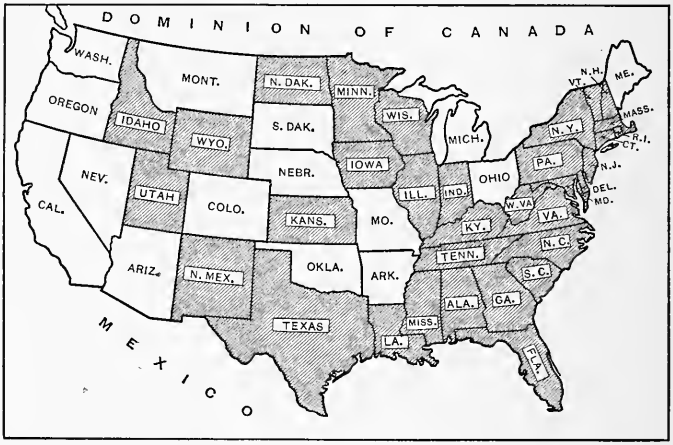
4. The system disregards the old American idea of the separation of the powers. It disregards or denies the executive veto and the function of the judiciary to act as the supreme interpreter of the Constitution and to nullify statutes as unconstitutional. It thus practically substitutes an unwritten for a written constitution and allows the people to change their fundamental law as easily as the statute law. This is too democratic, the critics say.

If the courts should declare "unconstitutional" an act passed by the people under the Initiative and Referendum because repugnant to the "higher law" of the Constitution, this higher law can be very easily referred and repealed; the Constitution can be amended as easily as a law can be passed. The conservatives say this is too easy and that the courts must not be interfered with in interpreting the Constitution and laying down the law. The radical democrats insist that a distinction should be made between adjudication and judicial law-making. In a suit at law between two individuals the court must not be interfered with by popular clamor or any popular action, but when a court assumes to set aside a popular policy which the people have enacted into law, then the power of the people shall be allowed to assert itself directly over their constitution to say what it shall or shall not permit. The people should have control over their policy-determining officers, and while judges in America exercise the power of determining or interfering with public policy they must expect to have their power brought directly under popular control (see p. 44). Does experience go to show that the people are disposed to be conservative rather than radical in changing their constitutions?

May Constitutions be too easily changed?

5. It is urged that direct legislation tends to lessen the

dignity and responsibility of legislative bodies. Men of ability and self-respect will not care to become members of a body whose duties are merely clerical and perfunctory, to register decisions made elsewhere. Also, it is urged, the governors are reduced in responsibility and importance and real leadership is prevented. The advocates of the Initiative and Referendum see the force of this. They recognize the vital need of leadership in a democracy; they see that the people cannot act except under some guidance or direction, under



DIRECT DEMOCRACY

The white States are those which have the Initiative and Referendum.

some organized capable leadership. They claim there is no essential conflict between leadership and popular rule, between representative government and direct democracy, and that the Initiative and Referendum are not for constant use, but only as emergency checks and emergency remedies, to be employed by the people in times of need. They have been compared to the policeman's club or the gun behind the door, for use only when needed. The Initiative and Referendum are not to

Emergency Remedies

take the place of ordinary legislative bodies, but to be used merely as alternative and additional means of legislating. It is true that amending and perfecting a law can be much better attended to while it is under criticism in a legislative body. There it can be "whipped into shape" after debate, but the advocates of the Initiative and Referendum claim that this can be done under that system.

6. It is urged that the Initiative and Referendum may easily be used for foolish and frivolous purposes. A few people can put the State to the trouble and expense of an election. Getting signatures to a referendum petition becomes a trade. Canvassers, it is said, agree to get signers to a petition for almost any bill for five or ten cents a name. This abuse has not been serious and the friends of the reform assert that when such fake canvassing has occurred it has been done by enemies of the Initiative and Referendum to make direct legislation ridiculous.

In spite of all these objections the plan of direct legislation has not been abandoned in any of the States that have adopted it in full or in part. (See map on opposite page for the States in which it is in operation.)

The Recall

Closely associated with the Initiative and Referendum is the *Recall*. This enables the people, after the lapse of a specified time, to "recall," or displace, an officer of whose acts they do not approve. In Boston, for example, the term of office of the mayor is four years, but he may be recalled by the vote of the people at any time after he has served two years.

Should Officers be removed more easily?

In 1908 an amendment was made to the constitution of Oregon providing for the recall of public officers in that State. Upon the filing of a petition signed by not less than twenty-five per cent of the voters a special election may be held to determine whether or not the people wish to recall an officer.

The reasons for the recall are set forth upon the ballot in not more than two hundred words, and the defense or justification of the officer may be set forth within similar limits. No petition can be filed against any official until he has been in office for six months, except in the case of a member of the State legislature. In such case a petition may be filed after five days of the session have elapsed. A second petition for recall cannot be filed against an officer unless the signers of the petition pay all of the expenses of the first recall election. In case it is desired to recall the official, a special election is held, known as the "recall election," at which the officer whose position is in question may stand for vindication or indorsement. That is, the officer must retire or run as a candidate for a second election. He continues in office unless the recall election goes against him. The city of Seattle recalled its mayor a short time ago and he was a candidate to succeed himself at the special election, but was defeated by a small majority. The advocates of the Recall insist that the people, after giving the mayor, or other officer, a fair trial of a year or more, ought to be able to get rid of him if they wish to, without waiting for his full term to expire.

"Recall of Judges and Judicial Decisions"

The Recall is applied chiefly to municipal officers. It has met with considerable favor and is now in force in a large number of important cities. Some have urged that not only administrative officers but judges also should be subject to the Recall, but this has met with a stout opposition as an interference with the independence of the judiciary. The "recall of judicial decisions" has also been urged. This does not mean that an ordinary case at law, after the decision of judge or jury, should be tried again before the people, but only when a court has interpreted the constitution and has nullified a public measure as unconstitutional which the legislature has sought to adopt, then appeal may be made to the people to see whether they will recall that decision and interpret the constitution in a different way. This would give

to the people and not to the judge the last word in saying what may or may not be done under the constitution[1] (see pp. 329–335).

The Short Ballot

It is claimed that the election ballot is too long — and too broad. In some places it is called the "blanket ballot," — it is oftentimes four feet long and three feet broad and contains several hundred names. In Chicago it is not unusual for the voter to be confronted with a bewildering array of hundreds of names on his ballot, from which he is expected to choose a state treasurer, a state superintendent of public instruction, trustees of the State University, a representative in Congress, a state representative, a United States Senator, county sheriff, treasurer, clerk, clerk of the circuit court, county superintendent of schools, judge of the county court, judge of a probate court, members of the board of assessors, nine judges of the city court for a two-year term, members of the board of tax review, ten members of the board of county commissioners and the president of the board, three sanitary trustees, and some others.[2] It is too heavy a burden even for the most painstaking and intelligent voter. The voter cannot know personally or even by reputation one candidate out of ten, and the number of candidates on the big ballot leads to *blind voting*. The voter tends to "shut his eyes" and vote a straight ticket. That is, he votes for "slates," or columns of candidates, or emblems (roosters and eagles) without trying to discriminate among the men on his party ticket. He thus becomes the tool or victim of the Boss who fixes the nominations beforehand. The reform of the Short Ballot proposes to remedy this by putting up fewer men to elect, in local elections, who can be better known by

Blind Voting

[1] For further objections to the Recall and further discussion, see Woodburn's *Political Parties and Party Problems*, pp. 452–455.

[2] Garner's *Government of the United States*, p. 138.

the people and be made more responsible for their conduct. All subordinate officers (whose functions are not political) can be appointed by these few or by boards responsible to them. The people can learn about and will interest themselves in the election of these three or four important and responsible officers and will exert themselves to make a good choice. In national politics, for instance, we elect the President, Vice-President, Senator and Representative, and stop at that, while over 400,000 Federal office holders are placed in office under responsible appointment. Why could not the same principle be applied in State and local government?[1]

Consecutive **No.** 48

Name of Voter

Residence

Registered No. of Voter

To vote for any candidate, make a cross (X) in the square in the appropriate column according to your choice, at the right of the name voted for.
Vote your first choice in the first column.
Vote your second choice in the second column.
Vote in the third column for all other candidates whom you wish to support.
Do not vote more than one first choice and one second choice for any one office.
Do not vote more than one choice for the same candidate, as only one choice will count for any one candidate.
If you wrongly mark, tear or deface this ballot, return it and obtain another.

FOR MAYOR (One to be Elected)	First Choice	Second Choice	Other Choices
JOS. E. ROBB			
NEWTON D BAKER			
HARRY L. DAVIS			
WARD 4 FOR COUNCIL (One to be Elected)	**First Choice**	**Second Choice**	**Other Choices**
NICHOLAS PAPP			
CHAS. MARQUARD			

A Specimen Short Ballot for a City Election

The Party Primary

The Problem of the Primary

Early in the life of political parties the word *primary* was used to indicate the group of voters, or the meeting of such voters, who nominated the candidates for office. It may have referred merely to a small caucus,

[1] For further study of the Short Ballot, see *Outlook*, July 17, 1907; Papers of the American Political Science Association, vol. vii; C. L. Jones, *Readings in Parties and Elections*, Annals of the American Academy, 1911. The Short Ballot League, 127 Duane Street, New York, will furnish pamphlets on the subject.

or informal meeting of party managers or interested voters. Sometimes in local politics a *mass meeting* of party voters in the town or county was called for nominating a candidate or a ticket, or to appoint delegates to some party convention, and everybody was entitled to come who claimed membership in the party. Usually delegates to district and State conventions of the party were chosen by these irregular local primaries or caucuses or mass meetings. If a great many were present at the primary, or meeting, and there were contests or divisions among the party members, some kind of formal voting was permitted. Someone passed a hat for the "ballots" and a committee was appointed to count out the votes. But there was a good chance to "stuff" the hat and to commit fraud in the count. Everything depended on the chairman or the committees he appointed.

Sometimes the primaries would be called at inconvenient times and places, in saloons and livery stables, or in rooms which could not hold half the voters, so that many who came could not get in. Sometimes the party managers failed to give due public notice of the primary, and "snap primaries" were held, delegates were appointed and a ticket nominated before the people knew anything about it. Or, a group of men in a back room in secret conclave would "set things up" and the loyal party voter when he came to the open primary found that there had already been a primary, — the bosses and the rings had arranged his ticket for him. These abuses and practices were especially prevalent in large cities where the people could not know one another. The consequence was that the bosses and their henchmen virtually directed the nominations. The party meeting, or "primary," was in no way directed by law. The law took no notice of the party or its conduct, or the way in which its members brought out its ticket of candidates. Only the final election was regulated by law. But it was soon to be seen that the nomination was as important as the election. If good officers were to be chosen

Irregularities in nominating Candidates and Delegates

and if only those on a party ticket had any chance, the nominating primary was even more important than the election.

Convention Houses

These irregular and lawless primaries and caucuses were not used so much to make direct local nominations but rather to name delegates to conventions for that purpose, — city conventions, county conventions, district conventions, State conventions. These delegate conventions were controlled by those who controlled the local caucuses and primaries. The people began to believe that the convention was not always fair and might be corrupt, and that it did not fairly represent the people and did not name for office the men the people or the voters of the party would have chosen. The convention was manipulated by rings of professional politicians and office-holders who gave all their time to politics; "slates" and "deals" were made, delegates were bought, and sold and merely a handful of men determined the action of the party. So the demand for primary election reform arose. The reformers insisted that the convention as a means of making nominations should be abandoned and that the whole body of the party should be allowed to take part in choosing the candidate, in order that men who cannot make politics their business or who will not indulge in dishonorable practices might better make their influence felt.

State Control of the Primary

In consequence of these demands and conditions most of the States have passed primary election laws to regulate the making of nominations. When and how and where shall a primary election be called? Who shall conduct it? Who may take part in it? How shall its expenses be met? How shall the ballot be prepared and what candidates' names may appear thereon? Shall the regular election laws apply to its conduct and what penalties shall be imposed for law violation? All such matters must be attended to by the States. A primary becomes another election and since every member of the party should have an equal chance with every other this right must be safeguarded by law, and irregularities and abuses must be

prevented as in the regular election. At first the primary election laws applied only to larger cities and were made optional elsewhere, allowing local communities to nominate their candidates by a primary election (managed by party committees) if they chose to do so. But in recent years most of the States have enacted State-wide primary laws which are mandatory in all localities and for all parties, especially for local nominations. In many States, nominations for the State and Congressional tickets are still made by conventions, though the delegates to these conventions may be elected by regulated primaries.

Essential Features in Party Primaries

Certain features are considered essential in a good primary election law:

1. The primary election of all parties shall be held on the same day, the time and place to be fixed by law and not left to party committees. This will prevent "snap primaries," and primary day, say from thirty to sixty days before election, will become as well known as election day is now. The voters of one party will be prevented from "packing" the primary of the other party and nominating weak candidates. The same election officials can conduct the primaries of all parties and save expenses.

2. A good registration law. The party voters must be registered a certain number of days before the primary, so that illegal or fraudulent voting may be prevented.

3. The party affiliation or preference of all voters should be ascertained and recorded. No opponent of a party should be allowed to vote in its primary. The law should protect a party from its enemies who may seek to weaken or disrupt it. The test of party membership or party fealty is a difficult matter in framing primary election laws. Sometimes a pledge is required of the voter that he will support the ticket nominated, or a statement that he voted the party ticket, or

most of it, in the last election. Many independent voters cannot make such pledges or statements and do not care to announce their party allegiance. Party officers generally wish to be liberal in admitting the independent element within the party, and experience has shown that it is not the part of party wisdom to apply hard party tests or cast-iron pledges. A mere declaration of party preference may be sufficient. Self-respecting and honorable men will not attempt to vote in the primary of a party whose principles and policies they are unwilling to promote, and the unscrupulous will do so in the face of pledges. If a man wishes to be so independent as not to acknowledge that he has any party allegiance at all, he may deny himself the privilege of taking part in a primary and merely confine himself to choosing between the parties after the nominations are made. This, of course, is a man's privilege.

4. The Australian secret ballot system of voting should be used in the primary, as in the regular election. All the safeguards of the law should be placed around the primary.

There are other minor features in a primary election. (1) It should be mandatory and not left to the option of party committees. (2) The candidates' names should rotate on the printed ballot, each candidate having his name first on an equal number. A name appearing first on the ballot has a distinct advantage, as many indifferent voters, not knowing the candidates, are likely to vote for the first on the list. Adams would therefore have an advantage over Williams if the names were arranged alphabetically. In a poll of twenty thousand the first place is probably worth one thousand votes. If the man's name is placed first who filed his application first, there may be collusion with party chairmen of committees. Rotation seems fairer. (3) A goodly number of names should be required on nominating petitions and a reasonable fee for the expenses of the primary should be paid before a man's name is permitted to go on the ballot. This will aid in preventing fake candidacies.

Polling places must be rented, election officers employed, ballots printed and distributed. In some States it is provided that the expense for these things is paid by the public on the ground that the primary election is a matter of public concern and is not held in the interest of the candidates. By other laws a fee is exacted of the candidate, ten dollars or more, to be collected and used by public officials and not by party committees.

If party delegates do not meet in convention to nominate a ticket how shall the party platform be announced? In Oregon each candidate nominated by the primary is required to announce his own platform in a brief statement of one hundred words. In Wisconsin the candidates of the party for State offices and for the legislature meet together and announce the policies which they will act upon if elected. In Missouri the party candidates for Congress act with the other candidates in making a party platform. In Texas if ten per cent of the party voters ask for it by petition, a question of party policy must be submitted to the voters in the primary. Under such plans the voters will know what to expect if certain candidates are elected. It should be known that the candidates represent and will stand on their platforms, both before and after election.

The Primary and the Party Platform

Objections to the Primary System

We can here only briefly state the various objections that are made to the primary system:

1. It tends to promote rather than check election corruption. A primary is only another election, and until our elections can be reformed we ought not to have any more of them. This objection has weight with many people.

2. It promotes a multiplicity of candidates to the confusion of the voters, and is likely to lead to a minority nomination. The "ring" may bring out a whole lot of candidates to divide the anti-ring vote while concentrating their own votes on their man. Thus a man may be nominated who represents but a

third or a fourth of the party voters, merely because he may receive more votes than any one else but may lack many votes of having a majority. A convention may keep on balloting until some one receives a majority of all; so if one of the leading candidates cannot be nominated, a new man satisfactory to a majority as second choice may be nominated.

This objection may be partly obviated by the *short ballot* (see p. 45) and by a system of preferential voting (see p. 54). In South Carolina the primary law provides that if no candidate for governor receives a majority of the party vote in the first primary, a second primary shall be held to choose between the two leading candidates.

3. It is claimed by party men that the primary system tends to weaken and destroy the party. It causes factions, jealousies, and divisions, and prevents effective organization for carrying elections. State candidates cannot be properly distributed in a geographical way so as to strengthen the party in all parts of the State. Others contend that the primary system tends to strengthen parties, as it so reforms their practices that men who have become antagonized and disgusted come into more active party relations.

4. It is claimed that where the primary nominating method is applied to a whole State for State offices the expense of becoming a winning candidate is so great that only rich men may hope to succeed.

The primary nominating system, while marking a democratic advance over the convention system, has not produced results that are entirely satisfactory. It has been the first means of breaking the hold of the political boss and his ring, but in order to accomplish the end in view, to allow the people to rule, the advocates of popular government claim that two elections should be avoided and that the primary should be superseded by a system of nomination by petitions combined with the short ballot and the use of the preferential voting.

Nominations by Petitions

These instruments of popular control are intended to apply more especially in local elections. *Nomination by petition* involves bringing out candidates without reference to their party relations and without party action. The *Party* has been made use of by self-seeking men for their own gain. The party managers ask the masses of the voters (most of whom never expect to hold office nor do they aspire to do so) to be loyal to the party for the sake of the managers and candidates, to put *them* into office. They would sacrifice good government for *partyism* and they would sacrifice the party for themselves.

False Party Loyalty

It matters little, or none at all, in local government, to what party the officers belong. Honesty, efficiency, and public spirit in office are what the people want. In city elections, on questions relating to schools, to public health, to suppression of crime, to the water supply, to the regulation of public utilities and all similar questions, it is to the people's interest to disregard all party issues and party agencies. By the system of nominations by petitions they are enabled to do this. To nominate by petition means that if any body of voters (a certain per cent provided in the law) sign a petition for a nomination, the name signed for must go on the official ballot, and it goes on without party emblem, column, or indication, and that is the only way in which any name may go on. There are to be no party signs, circles, or fixtures. If party managers still wish to hold a city convention, nominate a set of party candidates and have their names put on the ballot by petition, they could do so, — if the convention could enroll enough people, — but they cannot use a party emblem. If men then voted in groups for the same candidates they would be natural groups brought together for unity of action by a common opinion and common purpose. The party spoilsmen will find a way of acting together, if they can agree; so will those

Non-Partisan Local Government

who are opposed to their ways and their men. The names on the nominating petitions will be known and so will the character of the candidates.

Danger of Minority Control in making Nominations

Those who urge the substitution of the petition nominating method instead of the primary election, emphasize the serious danger of the plurality nomination which the primary tends to promote. A bad man gets a valuable political asset when he gets a party nomination; he can then use the party label to draw votes. "Whoever else may appear at a primary, those with axes to grind are pretty sure to be there to a man, and of these the largest single faction, or plurality, is more than likely to be machine-ridden. A minority goes to the primary. A minority of that minority is more than likely to carry the primary. A nomination is made by a minority of the minority because the procedure divides the majority." The machine forces act on the old maxim, "Divide and conquer." If the boss's opponents are divided, he wins, and the more candidates the smaller the group required to win. The majority are more likely to be self-respecting voters of independent minds, and they cannot, therefore, be so readily marshalled to act as a unit.[1] When the shackles of *party* are lifted and the people do not have to choose the "lesser of two evils" but are free to act with independent leaders who are concerned with local needs and are well educated on local issues, then a party nomination for a man may prove to be an element of weakness rather than strength.

The Preferential Ballot

The *preferential ballot* is vital to the plan of non-partisan local government. Further explanation of preferential voting may be found in a description of the Bucklin system, named after Hon. James W. Bucklin of Grand Junction, Colorado,

[1] These considerations and other forceful points are brought out in the address of Professor Lewis J. Johnson, "The Preferential Ballot as a Substitute for the Direct Primary," Senate Document No. 985, 63d Congress, 3d Session.

The Bucklin System of Preferential Voting

who originated it. It is put forward by students of government as good in theory and the best yet known in workable practice. "The ballot is easily understood, easily voted and easily counted." It will attract desirable candidates and is calculated to protect the general interest against cliques, machines and special interests. In the city of Cleveland it has supplanted the primary and has resulted in easy non-partisan elections.

The accompanying illustrations will aid in understanding it:

BALLOT ILLUSTRATING PREFERENTIAL VOTING
(Bucklin system)

INSTRUCTIONS. — To vote for a candidate make a cross (×) in the appropriate space.

Vote your FIRST choice in the FIRST column.

Vote your SECOND choice in the SECOND column.

Vote ONLY ONE FIRST choice and ONLY ONE SECOND choice for any one office.

Vote in the THIRD column for ALL THE OTHER CANDIDATES whom you wish to support.

DO NOT VOTE MORE THAN ONE CHOICE FOR ONE PERSON, as only one choice will count for any candidate.

For Mayor (One to be elected)	First choice (Not more than one)	Second choice. (Not more than one)	Other choices. (As many as you wish)
Charles E. Hughes			×
Champ Clark			
Robert L. Owen		×	
William H. Taft			
Woodrow Wilson	×		
William J. Bryan			×
Theodore Roosevelt			×

"A voter marks his first choice by placing a cross in the first or left-hand of these columns opposite his first-choice candidate's name and, if he wishes, a second choice by a similar cross in the second column, and as many other choices as he desires (without attempting to grade them) by additional crosses in the third or right-hand column, but only one choice will be counted for any one candidate. If a candidate receives a majority of the first choices, he is elected; if not, the first and second choices for each candidate are added together. The man then highest wins, provided he has that majority; if no one thus receives a majority, all three choices for each candidate are added together and the highest man wins whether he has a majority or not. This, with elimination of the primary election, insures either that the man elected is either the choice of a majority of the voters, or is the man among the nominees commanding the largest following of all after a free and full expression of choice by the voters. In fact, there will be a majority of the voters behind the winner, unless the list of nominees contains no one who can command a majority. Then we have the next best thing, and probably the best possible with that list of nominees."[1]

It is expected that the voter will express choices only for such candidates as he is willing to help elect; he should leave undesirable candidates unvoted for, as in the Australian ballot (see p. 16). If the voter puts his cross (×) in the second or third column, he may, in so doing, help to defeat his own first choice, but out of a list of desirable candidates he will be satisfied if his second or lower-choice man beats a ring candidate or an "undesirable citizen." The honest voter's main purpose is to keep out bad and incompetent men and that greatly outweighs with him the loss of his personal choice. This completely "turns the tables" on the machine partisan or henchman who puts private schemes ahead of

[1] Johnson's "Preferential Ballot as a Substitute for the Primary."

the public good and into whose hands the present system so perniciously plays.[1]

How the Bucklin System Works in Practice

Preferential Voting illustrated

Practical working of preferential voting, Grand Junction, Colo., November 2, 1909

Total number of ballots cast	1,847
Majority (of first choices)	900

Result of the votes for mayor

	First choice	Second choice	Other choices	Combined firsts and seconds	Combined firsts, seconds, others
D. W. Aupperle	465	143	145	608	753
W. H. Bannister	603	93	43	696	739
N. A. Lough	99	231	328	330	658
E. B. Lutes	41	114	88	155	243
E. M. Slocomb	229	357	326	586	912
T. M. Todd (elected)	362	293	396	655	1,051
	1,799	1,231	1,326		

The light vote in the second and third columns is, of course, due to the 603 Bannister voters' natural concentration on the only candidate acceptable to them. This gave them a lead in first choices, but being in the minority they could not win against the majority, because, thanks to this ballot, the majority were able to get together.

The decision arrived at was as follows:

No one having a majority in first choices, the firsts and seconds were added together. Then the leading candidate, Bannister, provided he had a majority, would have won.

No one having a majority by combined firsts and seconds, the first, second, and other choices were added together, and Todd, the candidate then leading, won.

Under the usual plurality system the minority would have beaten the majority and elected Bannister.

Result of Preferential Voting in Spokane

The scheme worked well in Spokane in 1911 at the first election under the Commission Government. There were five candidates to elect, each office carrying a salary of $5000.

[1] Johnson's "Preferential Ballot," p. 4.

Nominations could be made by twenty-five citizens. There were *ninety-two* candidates for the five offices. There were over 22,000 votes cast, including 7000 women voters who were voting for the first time. The election went off without difficulty. Of the twelve highest names on the list as well as of the five elected, not one had ever held an elective office before. They were men successful in business, a type quite different from the ordinary politician. One of the men elected (the President of the Spokane Chamber of Commerce) was nominated and elected while he was absent from the State. His only campaigning consisted in accepting the nomination and writing two or three letters home which were published in the local papers, — quite different from the corrupt and unseemly campaign methods which most of our cities are familiar with. Of the five winners in Spokane no one could command a majority of first choice votes, but all were men of standing, successful in life, of high civic spirit. Spokane found that the change in the rules had worked well.

At the next election two men were to be elected. The first trial had shown the uselessness of trifling candidacies. This time there were only twelve candidates, ten besides the two incumbents who were candidates for reëlection. Strong as these two men were, the voters selected two others in their places, — they seemed overtopped by still more respectable men.[1]

The system of preferential voting has supplanted the primary in more than twenty-five cities, and it bids fair to come into general use like the Australian ballot.

Proportional Representation

Another problem much discussed in recent years is that of proportional representation. There are several plans of proportional representation. They are devised for the better representation of the minority, that parties, interests,

[1] This description is taken from Professor Johnson's address previously cited, and substantially in his language.

Proportional Representation

or groups may be represented in the governing body in proportion to their numbers. Every plan involves the election of at least three persons at one voting. Under the "limited vote" plan, if three persons are to be elected in one election (as three commissioners for a county, or three representatives for the legislature from a district in the state, or three councilmen-at-large for a city), no voter is allowed to vote for more than two candidates. The minority party may then surely elect one if it nominates only one and if all or most of the party vote for him. By the "cumulative vote" plan, each voter may cast as many votes as there are candidates to be elected. He may distribute these votes, giving one to each candidate, or he may concentrate them upon one, giving three votes for one man. By organized concentration the minority party may nearly always secure a fair representation. In applying proportional representation in a city, ward lines should be abolished. Every councilman, or alderman, represents the whole city, no matter in what part of the city he may live. He votes on franchises, revenues, and all kinds of business in which the whole city is interested. All the people of the city are his constituents and all should be allowed to help elect or defeat him. However, since special local interests in a city may need attention from a Board of Aldermen, it is not unreasonable to require that the list of candidates should be representative of different parts of the city but all should be voted for by the city at large. In this way a ward boss or heeler whom a ward might send to the council could be defeated.

Proportional representation is still more easily worked by combining it with preferential voting. Among a list of candidates the voter may put the figure 1 opposite his first choice, the figure 2 opposite his second choice, and so on for as many candidates as he wishes to vote for. By an addition of choices any number of officers out of any number of candidates may be elected and every voter may have the assurance that he

is not "throwing his vote away" and that he will not go unrepresented, but that his vote is certain to contribute to the election of one or more of the men of his choice.[1]

The Spoils and the Merit System

The Spoils System in the National Government

Ever since Jackson's time the problem of the "Spoils System" has confronted the American democracy. The people of the United States have had a sad experience with the problem. They have succeeded in the face of opposition in substituting the merit system to a large extent. The merit system simply means the holding of office on the basis of merit rather than on the basis of political "pull" or influence. There was a time when lucrative and important offices were parcelled out to politicians and their friends without much regard to their fitness to fill them. This practice began in some of the States, especially in New York and Pennsylvania, before it was introduced into national politics. It was under Jackson, after 1829, that announcement was made, "To the victors belong the spoils," [2] which means that public offices and salaries shall be used to reward party workers. Whether the men appointed were competent and honest was a secondary matter. Party Presidents after Jackson followed the same rule.

[1] There is an American Proportional Representation League which publishes a *Proportional Representation Review*. The number of the *Review* for October, 1914, contains an analysis of the political complexion of the House of Representatives at Washington, showing the misrepresentation involved. In Illinois the Democrats secured one member of Congress for every 23,000 Democratic votes cast, the Republicans one for every 73,000 of their votes, the Progressives one for every 125,000. This gave the Democrats three times as much representation as the Republicans and five times as much as the Progressives. The Socialists in Illinois cast nearly 70,000 votes and got no representation. If representation had been proportional, the Democrats would have had 11 members instead of 20, the Republicans 8 instead of 5, the Progressives 6 instead of 2, the Socialists 2 instead of none.

[2] Said by Senator Marcy of New York.

It was not until 1883 that Congress was moved to pass an act for the reform of the civil service. By this act a civil service commission of three men was constituted to have charge of the new merit plan. Under this act the appointment to certain public offices is made upon the basis of competitive examination. No Senator or Representative is permitted to make recommendations to the board, and no officer can be removed for political reasons. A system of promotions enables competent officials to advance to higher places on merit.

Civil Service Commission

The number of offices covered by the original act was only fourteen thousand; the number now comprised is more than two hundred thousand. The list has been extended by executive orders of several Presidents of different parties, from Arthur and Cleveland to Roosevelt, Taft, and Wilson. About four fifths of all the national officers are now under civil service rules.

The "Spoils System" has been as harmful in the State as in the nation and much less has been done to check it. Appointive offices in almost all of the States are still filled largely upon a political basis. The distribution of the offices is sometimes the "burning" question in the campaign. The tenure of office is thus made to depend, not upon efficiency, but upon service rendered to the "machine" or to the "boss."

The "Spoils System" in the States

This is a standard of service which no intelligent man would tolerate in his private business. Three states — Massachusetts, New York, and Wisconsin — have passed civil service laws quite similar to the national law above referred to. These acts tend to exclude incompetent politicians from service and to give all intelligent men, whether politicians or not, an opportunity to serve the State. They also make the term of office depend, not upon political activity, but upon the capable administration of the duties of the office.

Civil Service Laws in the States

The merit system has also, fortunately, found its way into some of our large cities. This is true of the cities of Massachusetts, New York, and Wisconsin, as well as of many

cities in other States, such as Des Moines, Chicago, and New Orleans. For the most part, however, city offices are still parcelled out in return for political services, and the tax payer is left to bear the burden of inefficient and extravagant municipal government.

Caring for Dependent and Criminal Classes

States and cities are constantly trying to find better and more economical methods of caring for the dependent and criminal classes. A generation or two ago little or no attention was given by public officials to the matter of poor-relief. Alms were dispensed indiscriminately by public officials, private societies, and individuals. No questions were asked and no investigations made. In many cases public officials dispensed aid in such a way as to bolster up their political fortunes. The results were deplorable, and a hoard of confirmed paupers and professional beggars sprang up. The children of these people became familiar from infancy with this mode of living, and, coming to the conclusion that the world owed them a living without any effort on their part, followed in the footsteps of their parents. With self-respect gone there was no hope that they would ever become self-supporting citizens. And so conditions grew worse rather than better.

Poverty and Crime

The remedy for this state of things was sought in Charity Organization Societies which attempted to administer relief along scientific lines. Cases are thoroughly investigated by trained workers, and relief is given to worthy persons but denied to impostors. An attempt is made to help people to help themselves, and to this end employment is found for them. Advice and encouragement are also given. After a time the individual or family again becomes self-supporting and their self-respect has been maintained. This plan also prevents the overlapping process whereby an impostor might obtain aid from several different sources at the same time, while deserving

Work of Organized Charity

persons were entirely overlooked. The amount of money expended for charitable purposes in the United States is a tremendous sum, mounting up into the hundreds of millions of dollars. Some thought, obviously, should be given to the wise expenditure of this sum. This is the work of the Charity Organization Society. Organized charity, while doing the work more thoroughly than before, tends also to lower the total cost.

The Treatment of Criminals

The proper and effective treatment of criminals is a problem as old as history itself. The old idea was one of vindictive punishment. The latter idea looks to the reform as well as the punishment of the offender. While we still feel that the way of the transgressor should not be made particularly smooth, we also feel that the effort should be made to reform or cure the young offender, that is, a person who is young in years or new to crime. On this account reformatories are wisely separated from penitentiaries, young offenders being sent to the former and chronic ones to the latter. Some reformatories, such as that at Elmira, New York, are, to some extent, educational institutions where trades and the common branches are taught. The boy is taught to know and to do something, and is given lessons in saving and in thrift. After his discharge some association takes him in hand, provides work for him, and sees to it that he is not forever branded as an ex-convict. Society has been exceedingly heartless in this respect. It has been very difficult for a young man who has fallen to get a new start.

The Indeterminate Sentence

The indeterminate sentence and parole laws have been powerful agencies in the reformation of men. Under this plan a man convicted of crime is sentenced, not for a definite period, but for an indeterminate one of not less than two and not more than fourteen years. Any time after the expiration of two years the prisoner, in case his conduct has been satisfactory, may ask to be released on parole. If released, he reports at stated intervals to the authorities and his release finally

becomes permanent. The theory of the plan is that a convict is not finally released until he is considered cured, that is, until he is looked upon as a safe man to have his liberty. The plan, on the whole, has worked well; only a small percentage of the paroled fall back into their evil ways.

The fact that crime in the United States does not seem to be decreasing materially, has been the cause of some uneasiness. Severe penalties have been tried in vain. They do not deter the criminal as they were expected to do. He hopes to escape detection or punishment, and in too many cases he succeeds. Under our imperfect system of police and courts, it is far easier than it should be for the law-breaker to escape punishment. It is also easier for him to escape in this country than it is in some of the countries of Europe. Since it is the certainty, rather than the severity, of the punishment that deters the wrong-doer, it is exceedingly unfortunate that so many go scot-free.

Increase of Crime

We are looking more deeply into causes of crime now than we have ever done before and are coming to the conclusion that prevention is better than punishment. Crime is due, to a large extent, to evil surroundings, bad company, crowded tenements, grinding poverty, evil resorts like low saloons and gambling places, and to a lack of employment, as well as to useless luxury and excessive wealth. Reformers are now trying to remove or counteract the influences leading to crime. This work is fundamental and should yield good results in due time. In some parts of our large cities the buildings in criminal and unsanitary districts are being demolished to give place to better ones. Environment is an exceedingly important factor in character formation, especially in one's early years.

Causes of Crime

Regulation of the Liquor Traffic

One of the notable movements having for its purpose the prevention of poverty and crime, is that for the stricter regu-

lation of the manufacture and sale of intoxicating liquors. This has been carried on in the States under the operation of the police powers. The "police powers" of the State do not here relate merely to the conduct of the police department, but it is a term which includes all the broad general power of government to protect the property and lives of citizens, to regulate their conduct and to safeguard their health, comfort, and peace. Congress exercises very little of such power, as in preventing piracy, counterfeiting and disorder within national property or territory.

Police Powers of the State

Not only the regulation but the prohibition of the liquor traffic has been held to be justifiable on the ground that "the public welfare is the highest law" and that the morals, health, and safety of society demand the public control, if not the suppression, of this traffic. Many saloons have been unregulated and have been run by men who constantly violate the law. They have become a resort of gamblers, criminals, and immoral persons, and a source of political corruption. Prohibition workers and the "Anti-Saloon League" (an organization of allied churches) have aroused a strong public sentiment demanding the suppression of such saloons as the "breeding places of vice and crime." Twenty-four States are now, or soon are to be, under laws prohibiting the making and selling of intoxicating liquors except for medicinal and mechanical purposes.[1] As a war measure Congress forbade all distillation of spirits for beverage pur-

[1] The States in the order of their adopting prohibition are as follows: Maine, 1851; Kansas, 1880; North Dakota, 1889; Georgia, 1907; Oklahoma, 1907; North Carolina, 1908; Mississippi, 1908; Tennessee, 1909; West Virginia, 1912; Virginia, 1914; Colorado, 1914; Oregon, 1914; Washington, 1914; Arizona, 1914; Arkansas, 1915; Alabama, 1915; Idaho, 1915; Iowa, 1915; Montana, 1916; Nebraska, 1916; Utah, 1916; Michigan, 1916; Indiana, 1917. An amendment to the U. S. constitution has been passed by a two-thirds' vote of both houses of Congress and is pending (1918) before the State legislatures. If three-fourths of the legislatures approve it, prohibition will prevail legally throughout the nation.

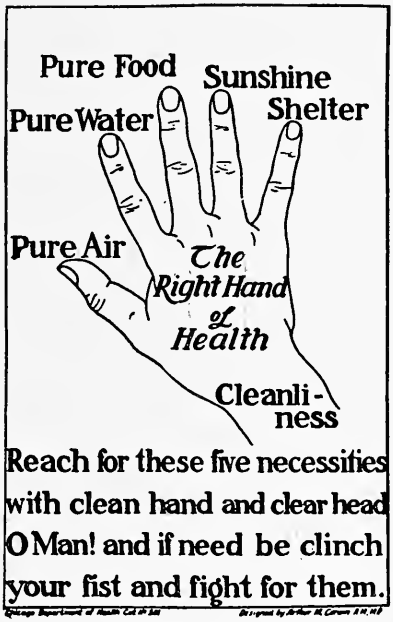
poses during the war, and distilleries (after October 1, 1917) were forced to close down. This was to prevent the use of grains and food stuffs for making whiskey.

The Webb-Kenyon Act and Prohibition

A decision of the Supreme Court has been handed down (January, 1917) affirming the constitutionality of the Webb-Kenyon Act. This Act provides that liquor shall not be shipped into a State contrary to the prohibition law of that State. The State has the undoubted right to exercise its police power to suppress the liquor traffic within its bounds. It was held that this power interfered with the right of Congress to regulate interstate commerce. It seemed the two rights were in conflict. By this decision the Court makes the police power of the State prevail over the commerce-regulating power of Congress. The court says: "We can have no doubt that Congress has complete authority to prevent the paralyzing of State authority." Before this the nation was in the position of coöperating with those who were seeking to defeat the efforts of the States to banish the liquor traffic. If liquor dealers were allowed to ship their "wet goods" into "dry" States, the police regulations of the States would be thwarted or defeated. Only a few of the prohibition States have so far forbidden all importation of liquors. These are the "bone dry" States. It is now decided they may all do so, as they likely will. It is a staggering blow to the liquor traffic. The nation should go further and actively sustain the State authorities in their efforts to enforce their liquor laws. The use of a Federal license to enable one to sell liquor contrary to the laws and wishes of a State should be considered an offense against the Federal Government, as much so as "moonshining." The nation should sustain and not defeat the State law. If the States should now prohibit the shipment of liquors to "dry" cities and counties within the State, the railroads and express companies would have to obey and the local "boot-leggers" and "blind tigers" could be forced out.

Public Health

There is no more important problem before the public than that of the public health, and probably none which has been longer neglected. It is exceedingly difficult to arouse a community to the importance of protecting itself against disease. People receive their daily milk supply without thinking very seriously about the sanitary conditions of the dairy from which it comes. The same is true of ice, meat, and other household supplies. The people are now, however, waking up to the supreme importance of these matters. State boards of health and voluntary organizations, like the Society for the Study and Prevention of Tuberculosis, are also doing a valuable work in serving public health. The time will come, if it has not come already, when prevention of disease will be considered the most important branch of medical science.


Pure Food
Sunshine
Pure Water
Shelter
Pure Air
The Right Hand of Health
Cleanliness
Reach for these five necessities with clean hand and clear head O Man! and if need be clinch your fist and fight for them.

A Health Message to The People

A card issued by the Chicago Department of Health. The people must now provide these essential needs of life through the agencies of government.

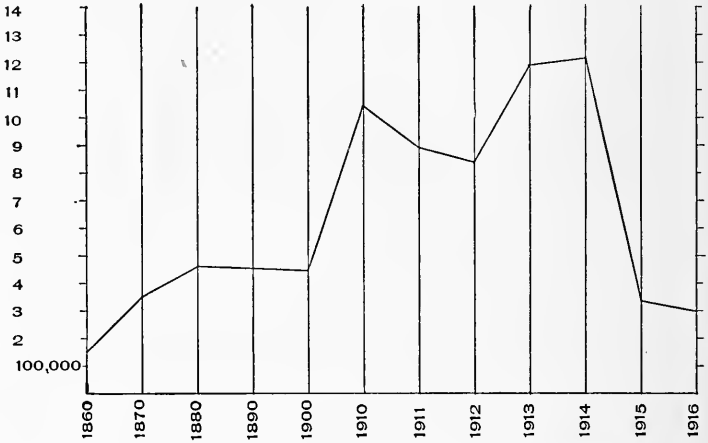
Immigration

Since 1787 we have received into this country fully thirty millions of people from foreign countries. In recent years immigrants have come at the rate of more than a million a

The Problem of Immigration

year. The problem has been to take in these people from foreign lands, many of them speaking a different language, most of them of different modes of life from our own, to *assimilate* them, and make them true and patriotic American citizens.

"The migration or importation of such persons as any of the States shall think proper to admit" was not to be interfered with by Congress prior to 1808.[1] Since that date Congress has had full control of immigration. The problem has



A Diagram Showing the Line of Increase or Decline of Immigration Since 1860

been a subject of controversy for over a hundred years. There was an anti-alien movement in 1798, when the notorious Alien Law was passed. The Nativist Movement and the "Know-nothing" Movement in the middle of the last century are other illustrations. Generally our policy has been one of liberality and hospitality toward the immigrants, keeping "the latch-string out," or an open door to all comers. America

[1] Constitution, Art. I, Sec. 9. This section of the Constitution applied chiefly to the foreign slave trade, but immigration was also included.

is looked upon as a land of freedom, an asylum for the poor and oppressed of other lands, as "another name for opportunity," where all may come, however poor, and find a chance to get on in the world. All the people who ever came to America (except the slaves) were immigrants and nearly all came for the same reason, — namely, to better their condition in life and to give their children a better opportunity than their parents had. The descendants of the early comers have been disposed to be generous toward the later comers.

America Liberal toward Immigrants

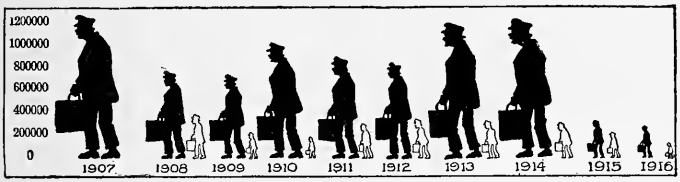


CHART OF IMMIGRATION FOR TEN YEARS FROM 1907
The effect of the war is seen.

Immigration increases in prosperous times and decreases in hard times, which shows that it is controlled by economic and industrial forces, if left unregulated by statute law. In 1864, in harmony with our liberal policy, Congress organized a bureau to encourage and safeguard immigration. It was not until 1882 that restrictions began. In that year Congress passed the Chinese Exclusion Act and provided for the inspection of immigrants and for the deportation of the undesirables, — the idiots, the insane, convicts, and paupers liable to become a public charge. All these were to be sent back at the expense of the steamship company bringing them over. In 1885 the Alien Contract Labor Law was passed by Congress to prohibit corporations from bringing over laborers under contract. The Immigration Act of 1910 provided a head tax of four dollars upon every immigrant, and it forbade the admission (in addition to the classes already mentioned) of epileptics, persons suffering from tuberculosis or other dangerous con-

The Immigration Bureau: Restrictions on Immigration

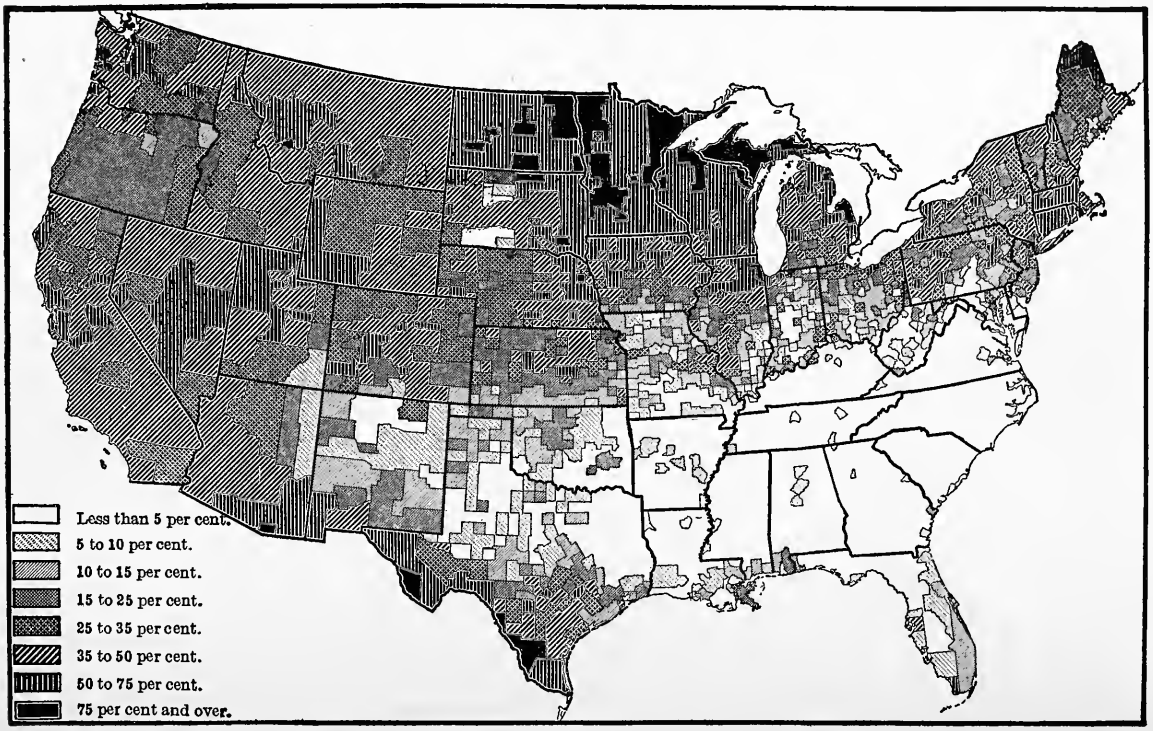
tagious diseases, polygamists, anarchists, immoral women, children under sixteen unaccompanied by their parents, and all Chinese, except Chinese students, merchants, professional men, and employes of exhibits or expositions.

These provisions are sanitary measures designed to protect the country from crime and disease, or to prevent the lowering of the standard of living among American laboring men, or to prevent the coming of a class of people deemed incapable of assimilation, like the Chinese. A medical examination is made of all aliens at the port of arrival, the cost being paid for by the head tax of four dollars, which goes to the "Immigration Fund." Less than one and a half per cent of the immigrants examined are rejected and returned. If an immigrant is denied admission he may appeal to a board of inquiry. If this board decides against him he may appeal to the General Commissioner of Immigration.

Demand for Greater Restrictions: Objections to Unrestricted Immigration

Within the last quarter of a century there has been a rising demand for more effective restriction on immigration. Three restrictive acts have been passed in Congress and have been vetoed by three successive Presidents.[1] In February, 1917, the Burnett Immigration Bill was passed by Congress over President Wilson's veto. This act strengthens and extends the exclusion of aliens. It increases the head tax from $4.00 to $8.00; it imposes heavier penalties on steamship companies for bringing to America persons whom the law seeks to exclude; its provisions are more rigid as to contract labor; and it imposes the "literacy test" which requires all immigrants over 16 years of age (not blind or dumb) to be able to read in some language. This is the provision which makes large exclusions easy. This seems like a penalty imposed on the immigrant, not for any fault but for lack of opportunity, in the country from which he came. The reading tests are to be taken from the Bible, as the only book which is printed in virtually every tongue on earth.

[1] Cleveland in 1897, Taft in 1913, and Wilson in 1915.


Less than 5 per cent.
5 to 10 per cent.
10 to 15 per cent.
15 to 25 per cent.
25 to 35 per cent.
35 to 50 per cent.
50 to 75 per cent.
75 per cent and over.

PER CENT OF FOREIGN-BORN WHITES AND NATIVE WHITES OF FOREIGN OR MIXED PARENTAGE COMBINED IN TOTAL POPULATION BY COUNTIES IN UNITED STATES, 1910

There have been three reasons for demanding restriction:

Reasons for Restricting Immigration

1. *The desire to protect the labor market from being overcrowded.* Organizations of labor have been urging restriction to save them from hard competition. Most of the immigrants are unskilled laborers who crowd into city occupations, or crowd the ranks of common labor in manufacturing, mining, building, with disastrous effect on American unskilled labor. Very few of them go to the farms. It is charged that their coming is due largely to the activity of ship companies and their ticket agents, who solicit and induce aliens to come to America under false representations of high wages and prosperity, while the large factory owners make use of them, after they are here, to bring down the price of labor.

2. *The great increase of immigration in recent years.* A million or more of new immigrants every year are more than we can reasonably be expected to assimilate and train for citizenship. When our land was unsettled we had need of and plenty of room for the immigrants; the restrictionists say we do not need them now when the pressure of population has begun to be felt.

3. *The change in the character of the immigration.* Formerly the immigrants came from Germany, England, Ireland, Scandinavia, and the north of Europe. Now over eighty per cent of the immigrants come from southern and eastern Europe or western Asia, — Italians, Greeks, Slavs, Russian Jews, Hungarians, Slovaks, Hunyaks, Poles, Croatians, and others not allied to us in race or stock or language. This tends to make our people heterogeneous and conglomerate, without the national unity that came with the original and more voluntary settlers of earlier years.

Benefits of Immigration

On the other hand our country has received great benefits from immigration. The sturdy immigrants have helped to build and develop America. Without their labor the work could not have been done. They have been a source of great

wealth to the country. It has been estimated that the cost of rearing a child in the United States is fully $1200. That expense has been met in the case of nearly every immigrant by the land of his birth. The great bulk of our immigrants are between fourteen and forty-five years of age, — within the years of greatest industrial productivity. The labor of the more than ten million foreign born who were in America in 1910 has added fully $600,000,000 *yearly* to the wealth of this country. These immigrants are engaged in doing the heavy and dangerous work of the country, — in mines, sewers, ditches, buildings, and road construction and factories.

The Great War and the need of national unity have impressed upon America the necessity of Americanizing the immigrant. New organizations now have this for their purpose, to require the children of immigrants to attend the public schools, to provide night schools for the adults, to require them all to learn the English language, and to understand something of our principles of government and the duties of citizenship.

Civic Problems and the Spirit of Citizenship

Some of these problems have been before the people for many years. Some of them may continue for years to come, while others of them will become "dead issues." Other problems will arise, or appear as old problems in new forms. The way they will all be met and solved will depend upon the intelligence, the public spirit, and the leadership of the people. There will be differences of opinion, but if discussion is free; if our political leaders are capable, upright, and outspoken; if the voters are uncorrupted and their citizenship is marked by honesty and integrity; and if voters and leaders are resolved to act in the public interest and not for private ends, then no problem will prove too serious for solution and the Republic will be safeguarded against any danger that may threaten.

TOPICS AND QUERIES

1. Explain how government is an "experimental science." What other ways are there to learn to govern except by "trying out" experiments?
2. Show the growth of democracy in the governmental changes of the last hundred years.
3. How have industrial and social changes brought about governmental changes in American history?
4. Debate: (1) "Resolved that the Initiative and Referendum should be adopted in the States."
   (2) "Resolved, that the evils of the primary election system are greater than its benefits."
   (3) "Resolved, that the license system is preferable to prohibition as a solution of the liquor problem."
   (4) "Resolved, that we need in America more individual liberty rather than more government."
   (5) "Resolved that immigration should be restricted by a literacy test.
   (6) "Resolved that there should be an educational qualification for suffrage."
5. Hold a mock class election under preferential voting.
6. Why is economic independence (an occupation, a fair living, some property) essential to good citizenship?
7. Will the Primary System tend to strengthen or weaken the party? Why?
8. What is the defense for the "Spoils System?"
9. What would be the population of your State if it were as thickly populated as Belgium or Holland?

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CHAPTER III

THE ENLARGING POWERS OF GOVERNMENT

Government Activities Change with Changing Conditions

The Problem of Government's Growing Business in State and Nation

As time goes on we find that government is attempting to do more and more for the people. If anything is needed the people seek to obtain it through the agencies of government. If anything goes wrong the people want some law to remedy it. They are demanding larger and larger activity on the part of government. This is a natural tendency in our complex industrial society where so many interests are interrelated and where the interests and conflicts of classes have to be reconciled.

Early Notion of Government

The ideas that prevailed about government in the early days of our republic were quite different. Jefferson spoke of government as a "necessary evil" and he said that "the government is best which governs least." His idea was that the chief end of government should be to protect society from crime and to secure the citizen in his enjoyment of life, liberty, and property. Jefferson thought the *State* could best perform this function. The central government, he thought, should be almost entirely a government for foreign affairs, to protect the States from foreign invasion or aggression, while also providing a few common services, like coining money and furnishing postal services which the people could not so well attend to for themselves. Jefferson had some doubt as to the propriety of a National Post Office, thinking it might be better to leave the carriage of letters to private enterprise. The thought was that the more government kept hands off and let the people alone the better for all concerned. Let people do things for themselves, in their own way, as individuals and

as neighborhoods. "Sumptuary legislation" was a fearful bogie — i.e. laws regulating what people consumed, what they ate or drank, or what kind of air they breathed or how they found their amusements or what kind of clothes they wore or how these clothes were made, or how people slept and lived. It was thought that laws and government should have nothing to do with such things. The people would know "when to sow and when to reap," and how to build houses and roads and make their own clothes and establish schools and manage their own affairs in their own local communities. If the people were left alone to go their own way they would go right and get on peaceably with one another.

This was an optimistic philosophy for a simple primitive age of individualism, and it was well adapted to a time when the States and settlements were isolated from one another and each was sufficient for its own needs. From the time a thing was produced until it was consumed, from the birth of a citizen to his death, all the business, the social, the political life of each separate community began and ended within the limits of the State itself. Travel and communication were difficult; a journey from Boston to Philadelphia was a long and laborious undertaking;[1] the mails were slow; transporting goods was costly, and the activities of the people were almost entirely within their own States and neighborhood. When the men of 1787 were forming a Union and setting up governments their imaginations did not bring within the scope of their dreams a nation of more than 100,000,000 people reaching over a vast continent from sea to sea.

Early Provincial Conditions

Now the growth of the national spirit, more than a century of free trade among the States, the marvelous increase in facilities of travel and communication, changes in city and industrial life,—all these have brought about entirely different conditions. Our social problems are not so simple, our lives are more inter-

National Unity and Changed Social and Industrial Conditions

[1] Read Franklin's Autobiography to see how he made this journey in the early part of the eighteenth century.

related; all states, sections, and neighborhoods are dependent on one another and are welded into a *single nation.* So our ideas of the functions of government have entirely changed, or if our ideas have not changed our practices certainly have. For the doctrine that "the Government must do nothing but govern" we have substituted the idea that the people may do many things for themselves by means of their government better than they are likely to be done for them by private enterprise. Now the Government has become a great builder of public works; a great financial agency; a great educational institution; a great benevolent institution; a great administrator of public utilities; a great protector of public rights and property.

New Activities in Government

It would be impossible to print here any adequate list of the new things our governments, State and national, are now doing for the people, or rather what the people are now doing for themselves by means of their governments. But let us look at a few of these activities. Let us consider first the Postal Department:

New Activities in the Postal Department

Rural free delivery brings the farmer's mail to his home; now he may get the daily paper telling him of the latest news and the market prices, though he may live several miles from a post office. The *parcels post service* will carry the farmer's produce to town for a pittance and bring him packages from the city store; and the postman becomes a real Santa Claus at Christmas time in all the cities and throughout the countryside.

Postal Savings Banks (authorized in 1910) within every village and town will receive and safeguard the pennies and dimes and dollars of all who wish to save, and the Government will pay interest upon their savings. This encourages

thrift and economy; and, since people trust "Uncle Sam" more than they do private savings banks, the postal savings help to bring money out of hiding and put it into circulation. Since the Government places this money in banks under ample security and the banks are able to lend it for all kinds of worthy enterprises, the Government thus encourages business and industry.

By the *Money Order Service* for anyone who wishes to send money to any part of the country, the Government will receive money at one post office and pay it out at another.

So we see the Post Office not only carries our letters but acts as an express company and as a bank for savings and exchange.

New Activities in the Agricultural Department

The *Weather Bureau* gives forecasts of the weather, giving warning of cold waves and heat, of frosts, rain, thunder, and storms. In the period of spring floods it saves thousands of dollars to the people by its warnings.

Weather Bureau

The *Bureau of Animal Industry* seeks to save and improve the domestic animals of the country. It is *government science* and government agencies that stamp out the hoof-and-mouth disease among cattle, the cholera among hogs, and diseases among horses. This Government Bureau inspects the meats and food supply of the people and safeguards their interests in many ways.

Bureau of Animal Industry

The *Bureau of Plant Industry* takes care of the forests and public lands and publishes all kinds of useful information on plant life in relation to agriculture. It supplies money to every State for an *Agricultural College*, for *Experiment Stations*, and it establishes *Demonstration Farms* where agriculture is taught and experiments are made which lead to improvement and progress in soil culture, crop increases, and in all manner of plant and vegetable culture. The Government is helping the farmers by sending out crop bulletins; by aid in locating their wells; by information on farm architecture for

Bureau of Plant Industry

building their barns and houses; and by pointing out ways of taking care of their farming machinery.

The Government through this department will help fruit growers to get their crops to European and Asiatic markets by pointing out better methods of preservation through refrigeration, packing, and handling. It helps hop-growers by importing varieties that ripen, some earlier, some later, thus lengthening the harvest season for hops and barley. It helps protect the cotton crop by preventing the root rot, the boll-worm, and the boll weevil.

The *Reclamation Bureau* is building vast reservoirs, canals, dams, and irrigating structures, in order that arid and waste regions may be brought under cultivation. By *Irrigation* and *Drainage Investigation*, carried on in a score of States, millions of acres of land are being reclaimed that had been rendered useless by alkali and similar mineral elements.

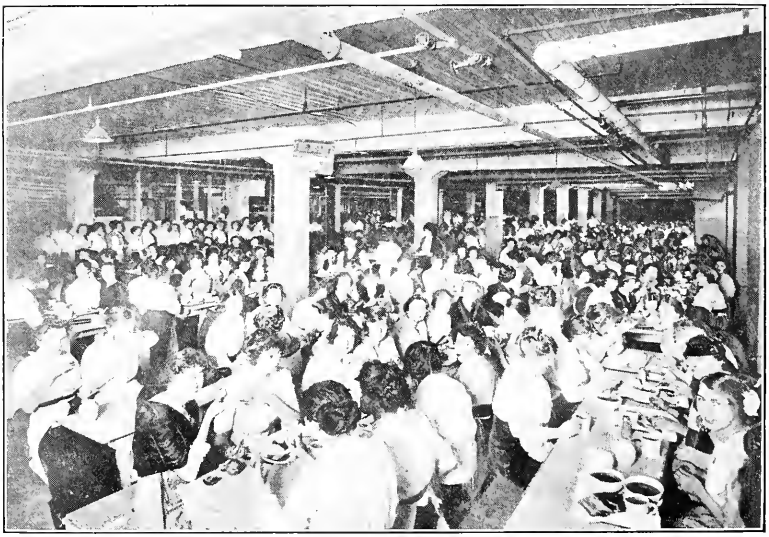
Home Economics

The Department of Agriculture is not only aiding production in the field, but it is helping to economize and regulate consumption in the house. Domestic Science and Home Economics fall within the new sphere of government. Housewives may receive from the Government recipes for cooking and canning and scientific and helpful information for the better regulation of the household. Many a farmer's wife owes her vocational training to the Agricultural Department of the United States Government. The Government Bulletins have been the text-books. These bulletins are in constant use in the household. Housewives may also rejoice that the newly organized *Office of Markets* is undertaking to systematize the handling of farm products "to lower the retail price of everything from potatoes to cherries." [1] So the Government is coming into the home, not merely to tax, or to interfere and annoy, but

[1] The Superintendent of Documents publishes a monthly catalogue listing all publications of all departments and bureaus of the Government. See an article in the *Survey* for December, 1915, on "Washington at Work," by Dr. Graham Taylor.

Scientists at Work in the Dairy Laboratory, U. S. Department of Agriculture

Children Working in a Cannery



Employees' Dining Room in an Industrial Establishment

to help in providing good food, good cooking, good health, and to promote efficiency and economy.

The new *Bureau of Child Welfare* is giving forth enlightenment in community institutes for the care of children, seeking safe conditions for their employment, giving medical examinations to children and advice to the mothers, and guarding the household against accident and disease. If her child is saved from a fatal diphtheria the mother may be thankful that the antitoxin used by the doctor was guaranteed by the Government.

Bureau of Child Welfare

So we see the Department of Agriculture has grown into a great educational institution, with a body of more than two thousand trained scientists and specialists and technical engineers carrying on investigations and enterprises for the people. They search throughout the world for all kinds of new seeds, grains, fruits, grasses, vegetables, trees, and shrubs, suitable to be raised and marketed in this country. In 1860 President Buchanan vetoed a bill to appropriate land and money to encourage the States to establish Agricultural Colleges, and another for removing obstructions to navigation at the mouth of the Mississippi River, both vetoes being based on the ground that the Federal Government was limited and could use Federal money only for Federal purposes. How far away this "old States rights school" of thought about national functions seems to us in these days! Now, as we have seen, the national Government is promoting multiplied educational agencies and has become a great builder of public works, — of a railroad in Alaska, a canal at Panama, and irrigation and reclamation projects of the widest scope.

New Activities in Other Departments

Other departments of the Government are promoting similar benefits and enterprises for the people.

In the field of education we have witnessed a similar advance and revolution. Before the Civil War in one half the country

Education

there were no public schools and in the other half they had still to be defended on the ground that they were a cheap means of protecting the community against crime. "Now we act on the theory that the children *in* the State are the children *of* the State and that it is the duty of the State to provide for all these children not only protection but opportunity for education and improvement." [1]

The *War Department* is projecting plans for opening up the coal fields of Alaska and conserving its other natural resources. The *Interior Department* administers a vast business in *Pensions* and *Patents* and *Lands;* a *Geological* and *Topographical Survey* gives information on mineral resources and products, and, in connection with its *Bureau of Mines*, investigates mine accidents and seeks to prevent them. The *Department of Commerce* exercises large and growing powers over the trade of the country (see p. 319), and the *Department of Labor* has established, among other agencies for the betterment of labor, a *National Employment Bureau* by which from Washington, without fee or charge, an employer who is in need of a man and a man who is in need of a job may look to the Government for help. This Bureau uses the facilities of the Post Office Department and the Agricultural Department.

This is only a partial list of the new activities of government that have come into operation within the last generation, which Congress has authorized and for which it has appropriated money. Congress has also created a number of important commissions authorized to exercise large governmental powers.

New National Commissions

The *Interstate Commerce Commission* has tremendous powers over the railroads and the conditions and means of commerce among the States.[2]

The *Currency Commission* may regulate the currency of the country and it may inflate or contract or control the currency at will.

[1] Lyman Abbott, "Reminiscences," *Outlook*, June 23, 1915.

[2] During the period of the Great War the Government has taken control of the Railroads.

The *Trade Commission* may inquire into what is fair or unfair in trade competition and may investigate trade and industrial difficulties and make decisions which may be reviewed and reversed only by the Federal Courts. A *Tariff Commission* and a commission with a control over power sites are now proposed and supported by powerful interests and much public sentiment.

Government Regulation for Public Welfare

Public regulation has increased in all fields in order to protect, preserve, and promote the public welfare. Government has become a partner in many lines of business and has undertaken to protect people in many ways formerly not thought to be necessary:

New Powers of Restraint in Government for the People's Protection

1. *The people must be protected against monopolies.* For centuries English and American law had regarded monopolies as an evil to be prevented.[1] "Competition is the life of trade." This maxim was thought to be sound and it was thought that the freedom of competition must be preserved. The small producers of goods essential to the people were being crowded out by the big producers; the big fish were eating up the little fish. Large combinations (Trusts) were formed among the larger manufacturers and business men to control the output and prices in many important products, — oil, sugar, lumber, binding twine, salt, steel, meat, etc. As a consequence Anti-trust laws have been demanded either to regulate competition by preventing dishonest customs, "business piracy" and "cut-throat methods," or to restore competition by dissolving "big business" and protecting men in small business from being crushed or driven out by a giant

Monopolies and Anti-Trust Laws: "Big Business"

[1] Copyrights and patents were authorized as a rightful means of giving an author or an inventor a monopoly ownership and control for a period of time of the product of his brain and genius, after which period the result of the work of the author and inventor should accrue to the benefit of society.

combination or Trust. It is now coming to be recognized that a business is not to be thought of as good or bad according to its *size* but according to its *methods*. "Big business" is a natural evolution, promoted by easy means of communication and organization; it is not to be prevented or dissolved but to be regulated and compelled to use its powers of production and sale for the common benefit of all. This presents to government the whole problem of regulating trusts and combinations in restraint of trade. For this reason the Federal Trade Commission was created.

Protecting Consumers: Pure Food Laws

2. *The consumer must be protected against fraudulent goods at extortionate prices.* The "law of supply and demand" of the old political economy could operate in a community where producers, consumers, sellers, and buyers all knew one another. Now, if a buyer is cheated or gets bad goods at one dealer's store, he cannot help himself by going to another. There the goods are likely to be the same, since all goods of that kind come from the same source, — the big supply company. The buyer cannot know personally the manufacturer, the wholesaler, or even the retailer, of the goods he buys. Producers may combine to extort unreasonable prices, and frauds may be practiced against which the consumer has no means of protecting himself. What can the buyer do when he finds the label has misled and deceived him as to the contents of the package? Or when the milk man or the butter man or the vegetable man or the coal dealer is not giving him fair weight and measure? There must be *Pure Food* laws to protect the people against adulteration, to regulate wholesale makers of food products, and there must be public oversight and control to protect the people in their right to a fair measure for a fair price. All these needs call for increased powers and regulations of government. Government inspection must be provided for in meat-packing establishments and dairies. Milk must not be contaminated or diluted; oleomargarine must not be sold for butter; false weights and

measures must be exposed by government detectives and agents; and cheating dealers should be punished.

3. *Investors must be protected.* The buyer of securities — stocks and bonds — is at a disadvantage. He looks to government for protection. The old common law principle *caveat emptor* — "let the buyer beware" — was good enough in its time but not now. This meant that every buyer should look out for himself. If he got caught and bought worthless securities, he simply suffered from his own lack of shrewdness and got what he deserved. At any rate the law gave him no remedy. The State was acting somewhat on the principle, "Every fellow for himself and the devil take the hindmost." Laws based on such a theory were immoral. But now a more Christian and a better social sentiment prevails. People are demanding that they as investors shall have some standard of safety and honesty in the issue of securities and that the Government shall fix this standard and enforce it. So "Blue Sky Laws" have come into use in some of the States and there is a demand for more of them.

Protecting Investors

"Blue Sky Laws"

A "blue sky law" is one designed to prevent a corporation from selling its stocks and bonds without having any real values behind them. Schemes are set on foot and enterprises are made to look well on paper, or are over-capitalized with a view of unloading a lot of worthless stock on gullible people. Sharpers misrepresent and sell this stock to honest and unsuspecting investors, who get nothing in return but "blue sky." A "blue sky law" would compel a company to file with the auditor of State, or in some way make available to the public, full information as to its officers, holdings, assets, and operations, with penalties for misrepresentations. If the company were fraudulent in its operations it could be closed up and its officers convicted and imprisoned for the crime of "getting money under false pretenses." The public should be protected against unscrupulous sharks who practice "high finance."

Government Regulation of Industrial Conditions

Labor Laws

A whole new field of labor legislation has come to the Government with the development of the factory system, the wage system, capitalism, and large industrial organizations under "captains of industry." The Government must have an eye to the rate of wages, the settlement of labor disputes, factory laws and mine laws, the increased efficiency of the worker, and compensation to workmen when they are injured while at work. The State is, therefore, enacting laws touching dangerous machinery, ventilation and sanitation, fire protection, hours of labor, "sweatshops,[1] and general decency in labor conditions."

Factory and Mine Inspection

The State provides agents for the inspection of factories and mines, and the dangerous parts about engines and boilers, requiring safety devices where they are needed. The dust and smoke and fumes of mills, especially of lead and paint mills, and others of a character that are likely to be injurious to the health of the workers, must be alleviated by higher ceilings and better air supplies. Factories are forbidden to employ children under a certain age and women more than a certain number of hours and under certain conditions. In New York, Massachusetts, Pennsylvania, and Illinois, the four largest manufacturing States, the age for child labor has been fixed at fourteen, and the last does not permit the children to work more than a certain number of hours each day. On account of the poverty of many families in the factory towns and the need felt for the children's wages, the parents

[1] In the clothing industry the materials for garments are often taken from the tailoring establishments to the so-called homes of the workers where, in a single crowded tenement room, the whole family and other workers, make up the garments. Such a place is called a "sweatshop." Cleanliness is difficult and the work may sometimes be done in rooms where persons are sick with contagious diseases, a serious danger to customers and the public health, not to speak of the greater evil, — the impossibility of any decent home life for the workers.

often will not coöperate with the authorities in enforcing these laws but seek rather to evade them.

Workmen's Compensation Laws provide for paying some compensation to workingmen for injuries received while at their toil. Fully 75,000 persons are killed every year in American industries and many more have been injured. A workman's injury may result from his own carelessness or by the carelessness of a co-laborer, or from that of his employer, — that is, from the condition of the shop and tools of his work, or from his having been kept at work over hours. Whatever the cause, a Workmen's Compensation Act is intended to have the facts ascertained and damages awarded by some fair standard without the necessity of a lawsuit against the employers or corporation on the part of the workman, or one of his family if the workman be killed.

Workmen's Compensation Laws

A commission ascertains the extent of the injury and fixes the award, while the workmen agree to limit the amount of damages to rates fixed in the act. Under compensation laws the award is made upon evidence and by due process "made and provided," without expense to the injured workman or his family.

In case of industrial disputes between employers and labor unions Boards of Arbitration are provided whose duty it is, in cases of strikes and lockouts, to investigate the situation and try to bring about a peaceable settlement. These industrial disputes, when they result in strikes or lockouts, cost vast sums of money to workmen and employers, said to exceed $200,000,000 a year in America. Arbitration is generally voluntary between the labor unions and the employers' associations, under what is called a "trade agreement," covering wages and hours of labor, apprenticeships, and other conditions. When a dispute arises it goes automatically before a joint committee of the two bodies, which is usually able to come to some compromise agreement. A disinterested labor expert may be called in to aid in these adjustments, and if no

Settlement of Industrial Disputes

decision satisfactory to both sides can be arrived at an appeal may be taken to an Arbitration Board. The Government seeks to encourage such arbitration, as prolonged "labor wars" have led to considerable demand for compulsory arbitration. In some labor disputes, as on railways and street car lines, the public has vital interests at stake. It is felt that the settlement or prevention of such troubles should not be left entirely to the parties in dispute. When the public interests and the peace and order of the community are interfered with by private quarrels the state has a right to compel the disputants to come into court to have their differences settled by an impartial judicial tribunal.

Government Control of Public Utilities

Public Service Corporations

A *Public Service Corporation* is one that is chartered or authorized for the purpose of rendering some important public service, such as furnishing light, water, heat, transportation, or communication for the people. Private capital may be invested in such enterprises, but such corporations may not be managed merely for private interests. They use the public streets, alleys, and highways, and such use gives value to their plant, while the life of the city is their chief asset. The public is interested in good service and fair rates. In modern life, especially in cities, people must have telephones, and gas for cooking, and electric lights, and means of travel and transportation, and water from the city mains. These are all public utilities, — they are public in their character and are not only useful but almost indispensable.

"Natural Monoplies"

The business of furnishing any of these things is a *natural monopoly*, — from the nature of the business there should be but one company for each enterprise. Whether there be two or more in the beginning, there will be but one in the long run. Private interest if not public interest will lead to combination. It is foolish to have two telephone companies in a city; much better and cheaper service

can be had from one. Two or more water companies or gas companies should not be allowed to tear up the city streets; one does enough of that. If the city or State does not itself furnish these necessary conveniences for the people, then the State, acting for the public through a *Public Utilities Commission*, should regulate and control the private corporations that are authorized to do so. The public have a right to compel such companies to treat all patrons alike, to fix fair rates, and to keep the service at a suitable and contract standard. The rates that are paid are like taxes, since the service cannot be dispensed with, and by having to pay these rates the whole public are contributors to the profits of the corporation. The public, while seeking to do justice to the corporation, should share both in the control and the profits. Many cities receive large returns in revenues from the franchises granted to these public service corporations and from their operations. (See p. 132.)

The Public Utilities Commission

Growth of National Powers at Expense of State Powers

In all this growth in governmental powers there has been a constant and increasing tendency toward the enlargement of national powers at the expense of the States. The national government is urged to go still further in its powers of regulating commerce and in its investigation and control of industrial disputes. It is urged further to regulate railway rates and express companies; to supervise life insurance; to enact a national divorce law and national prohibition of the liquor traffic; to provide national trade mark legislation; a national child labor law; the erection of a national university; the deflection of immigrants and the control of their settlement in the right parts of the country; a national quarantine law; the national control of fisheries and oyster beds within the waters of a State; to appropriate funds for local benefits and to exercise national inspection, supervision, and control over

Are State Powers to be preserved?

the local domestic affairs of the people in many other ways. The various national commissions and powers that we have described indicate the extent of this growth of Federal activity and control. So noticeable has this been in recent years that the fear has been expressed that local self-government and the powers of the States will eventually be swallowed up in one all-embracing Federal power. Old "States' rights" loyalty is fading away, and even the States of the South that were the most devoted to that doctrine are willingly accepting the exercise of more and more national functions. The reason for it is that the people are willing to let the national Government pay for enterprises within the States and, besides, they feel that what the national Government undertakes is sure to be more efficiently done than if it were left to the States, and the more efficient States wish protection against the negligence of others. They feel that Uncle Sam has a way of enforcing the law and getting things done. The illicit liquor seller, who runs his "blind tiger" or "bootlegging" trade in defiance of State law would not dare to run a week without a Federal license.

State Neglect and Inefficiency Tends to the Increase of National Powers

It is now for the States to decide whether this tendency shall proceed. Will they give their own people more efficient government while recognizing their obligation to the nation as a whole? "No State can live unto itself alone." It must regulate its affairs with reference to its sister States.

"If any State is maintaining laws which afford opportunity for practices condemned by the public sense of the whole country, or laws which, through the operation of our modern system of communication and business, are injurious to the interests of the whole country, that State is violating the conditions upon which alone its power can be preserved. If any State maintains laws which promote and foster the enormous overcapitalization of corporations condemned by the people of the country generally; if any State maintains laws designed to make easy the formation of trusts and the creation of monopolies; if any State maintains laws which permit conditions of child labor revolting to the sense of mankind; if any State maintains

laws of marriage and divorce so far inconsistent with the general standard of the nation as to violently derange the domestic relations which the majority of the States desire to preserve, that State is promoting the tendency of the people of the country to seek relief through the national Government and the extinction of local control. . . . It is useless for the advocates of States Rights to inveigh against the extension of National authority in the fields of necessary control when the States themselves fail in the performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to respect any one's right to exercise a power which he fails to exercise. The governmental control which they deem just and necessary they will have. It may be that such control would better be exercised in particular instances by the governments of the States, but the people will have the control they need either from the States or from the National Government; and if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised, — in the national Government. The true and only way to preserve State authority is to be found in the awakened conscience of the States, their broadened views and higher standard of responsibility to the general public; in effective legislation by the States in conformity to the general moral sense of the country; and in the vigorous exercise for the general public good of that State authority which is to be preserved." [1]

Is the "Government best which Governs Least" under a Government by the People?

As we have seen the powers of government are everywhere increasing. After all, is "the government best which governs least"? One might think as he noticed this vast increase of governmental powers that a knowledge of them would make the bones of Jefferson and the early fathers rattle in their graves, except as one reflects that if the fathers could see the new conditions they would be quite sure to consent to the new arrangements. The governments of Europe which Jefferson knew, had been chiefly a burden upon the people, imposing taxes upon them and interfering with their rights, interests,

[1] Elihu Root, address in *Reinsch's Readings in American Federal Government*, pp. 735–736.

and actions. But under a "government of the people, for the people, and by the people," government has become not an oppressive agency apart from the people, but a benevolent agency for the coöperation of the people in working out what they wish to do together. It is the people's government which they mean to use in whatever way will best promote their common good and common interests. This growth in democracy, together with the notable changes in industrial life, will account in large measure for the great growth in governmental powers and governmental problems which our country has witnessed in recent years. The people are undertaking to do more for themselves and they are using their State and National governments for this purpose.

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TOPICS AND QUERIES

1. Why did Jefferson think that "the government is best which governs least" but would not likely think that now if he were alive?
2. In what sense may principles of government be considered permanent while policies of government must be adapted to circumstances?

3. In what sense is the Government a coöperative agency?
4. If the majority can rule and workingmen are in the majority, why do they not control the Government? Would that be "class legislation"? Is that desirable?
5. Debate: "Resolved that public utilities should be under public control and ownership."
6. Debate: "Resolved that National Powers should continue to increase and State powers decrease."

CHAPTER IV

THE COMMUNITY AND THE CITIZEN: LOCAL GOVERNMENT

History and Development of Local Government

Government began in America in the settlement, usually called a colony. It was sometimes called a "town" or a "plantation." "In the name of God, Amen," began the compact signed in the cabin of the Mayflower by the Pilgrim Fathers, by which they agreed to live together in order and under authority. They wished to prevent the "discontented and mutinous" from "using their liberty" too much to the detriment of all the rest. When "every man does what is right in his own eyes," as some of the people wished to do who were coming to America, trouble is likely to arise because some men's eyes see evil and they follow what they see and like. The community sense and the common welfare have to decide as to the limits of men's rights and conduct. So the first settlers in their local community in Massachusetts, or down in Virginia, combined themselves together into a "civill body politick" to "frame such just and equal laws, from time to time, as shall be thought most meete and convenient for the general good of the Colonie, unto which we promise all due submission and obedience." [1]

Government in America began Socially in Settlements and Plantations

Other settlements, or colonies, were made on lands granted by the crown. The people came as townsmen, in families from certain neighborhoods, and they settled in *towns*, to which they often gave the names of the places from which they came, — Boston, Ipswich, Plymouth, Dorchester. Their settlements were sometimes managed and their officers elected

[1] Mayflower Compact.

by commercial corporations whose ruling heads remained in England. Later all governing powers were transferred to the colonies. In each of the colonies there soon came to be other local towns and settlements. Then as the settlements and population increased and because they had common interests and common dangers and needed common laws the several towns within a New England colony came to elect representatives to a Council or Assembly to act with the Governor in making and administering the laws according to the terms of the charter, or constitution, which the home Government had granted. The first assembly in Virginia, which was also the first representative assembly in America, was convened by Governor Yeardley in 1619, and consisted "of two Burgesses out of every Town, Hundred, or other particular Plantation, to be respectively chosen by the Inhabitants." Thus began representative government in America, and thus came about, through a sort of cöoperation or federation of the towns or settlements, the Colony Government which afterwards became the State Government.

Local Government developed into State Government

The colony government soon came to exercise authority over the towns in general State matters, but the latter always retained entire control over their local affairs, and in some colonies, such as Connecticut and Rhode Island, the colony government was looked upon more as *a federation of towns* than as a superior authority. This indicates the manner of growth or the evolution of government in America, the towns federating to make the State, the States federating to make the nation. So, as we see from the history of the colonies, the beginnings of our government were *local*. We had local self-government in our system at the start, and we still retain it in our habits and our blood.

Local Self-government is retained while State and National Governments are developed

In 1776 the thirteen original colonies in America, each having its own local government, united to resist what they deemed unjust laws and because they wished to continue to govern themselves in all their domestic or community affairs. They

fought for their independence from Great Britain and after achieving it they were known as States or Commonwealths. These States then formed "a more perfect union" and under this firm union they have grown into the larger community, known as the *Nation*, the United States of America.

Community Civics: National and World-wide

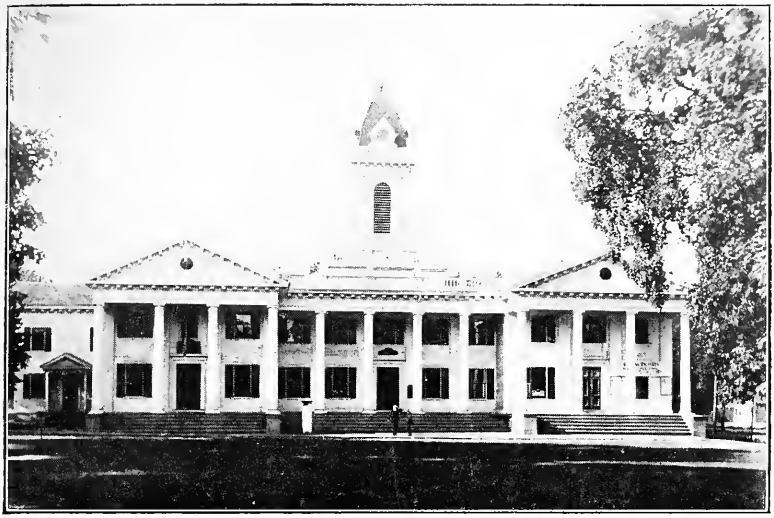
From first to last through all this growth from primitive settlements to a great nation the people of America have lived in civil communities. They have expanded from sea to sea in the same way, by new community settlements in the West, until we now have forty-eight States organized under community life with various kinds of local civil communities. All these communities, large and small, offer a variety of "community civics," in the neighborhood, school district, township, county, village, city, town, State, nation. And the nation is now reaching out to embrace in its influence for good the *world-community*. America is one of a family of nations. The whole world is the field of civics and international affairs, and the great questions of world war and world peace were never more important to America than they are to-day.

Forms of Local Government

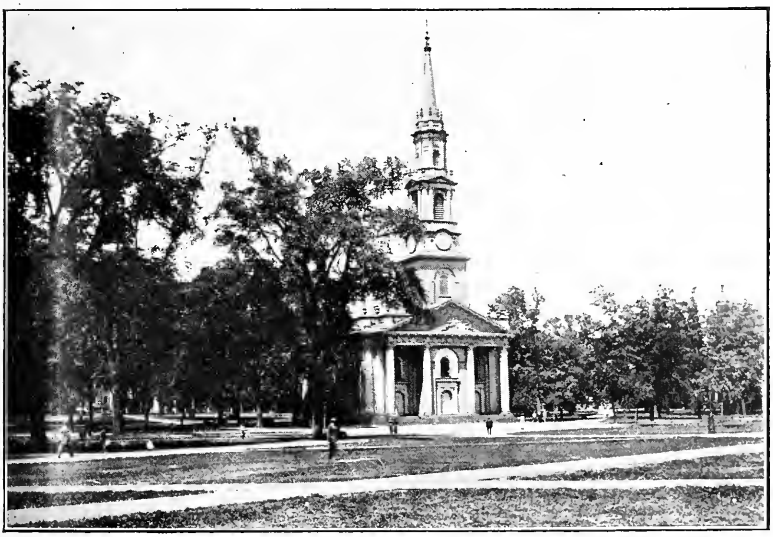
Each State provides its own forms of local government. They are essentially the same throughout the country, the differences that exist being due chiefly to the historical conditions under which the different sections of the country were settled. In New England we have the *town* system; in Virginia and the South the *county* system; in the Middle and Western sections a combination of these which may be called the *county-township system*, or the mixed system.

The Town

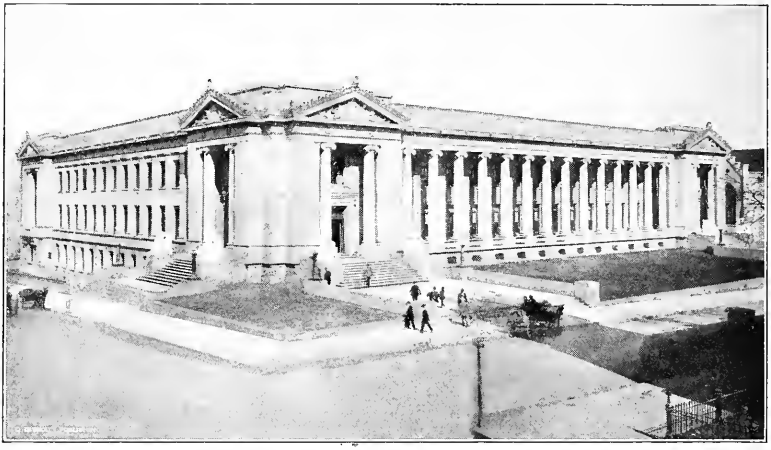
The New England town is the oldest of our political communities. The places of settlement were found in a natural but irregular way, somewhat as a cow finds pasturage, the



A New England Town Hall



A New England Common



County Court House, Memphis, Tennessee

County Court House, Mobile, Alabama

people wandering to the lands that suited them best. The *town* is usually irregular in shape and in area, and may contain a few hundred people or it may have a population of more than 100,000, as the villages grow into cities.[1]

The *town* manages the schools, the roads, the bridges, the care of the poor, the lighting and paving of streets, etc. It acts as the agent of the State in carrying out State policies and State laws, assessing and collecting the State taxes and administering health and police laws, and, except in Massachusetts, it remains as it was from the first, the district or unit for electing a representative to the legislature. The government of the early New England town was very democratic. The settlers (heads of families) came together in a *town meeting* to select their officers ("selectmen") and to decide on all matters of local government. These town meetings are still held annually in New England, usually in the spring, due notice being given by the selectmen. At these meetings the qualified voters, with a moderator presiding and the town clerk acting as secretary, decide on questions of taxes, improvements, schools, highways, etc. The town officers make their reports for the year, and estimates and plans are submitted for the following year. These are discussed and passed upon and new officers are elected for the year. The officers are Selectmen who have general administrative charge of the town, the clerk to keep the records and statistics, the treasurer, assessors and collectors of taxes, constables, school committees, highway officers, overseers of the poor, and library and cemetery trustees. Everything is in the hands of the local community, whose officers are responsible for yearly accounts of their stewardship. In these town meetings spirited discussions arise, as any voter may introduce any resolution he pleases and defend it against all comers. Every proposal is criticized and scrutinized and a lively interest in public affairs is culti-

Town Government and Town Meeting

[1] New Haven, Connecticut, still retains its town government, though it has a separate city government, too.

vated. It was in such meetings that Samuel Adams, John Adams, James Otis, Josiah Quincy, and other New England leaders had their training for citizenship and statesmanship.

Decline of the Town Meeting

This form of local government in the town, by mass meeting and public debate, is not now so easily conducted as in more primitive times. Cities have arisen within the limits of the towns; immigration has brought a more heterogeneous population; there are clashes between factory interests and farm interests; modern machine and caucus methods have been introduced; the voters are too numerous to be accommodated in a single hall, and for these reasons, though the town organization is still retained in many places of considerable size, in many of the larger cities the popular meeting has given way to a municipal organization or a representative city council.

The County

The *county* arose in the South. The planters lived far apart and governmental areas covering considerable territory arose, after the manner of the counties in England. It was a civil division of the colony, or State, for judicial or administrative purposes. The county's functions increased and it finally came to have charge of most of the local affairs, — schools, poorhouses, jails, courthouses, highways, bridges.

Counties vary in size and population in various States. A small county in Rhode Island has about twenty-five square miles, a large one in New York over 2800 square miles. A thinly populated county in Texas may have 500 people, a thickly populated one in New York over 2,000,000.[1] In Delaware there are three counties; in Texas there are 244, while in other States the numbers range between these figures. In New England the counties are not numerous. In Massachusetts, with over 3,360,000 people, there are only fourteen counties.

[1] When cities arise within a county their local affairs are managed by a separate city government.

The New England county was originally only a collection of towns for judicial purposes, — a convenient district for holding civil and criminal courts, and the county officers were merely officers of the court, — as clerk, sheriff, constable. As a local governing body the county was altogether subordinate or unimportant. In the South and West more local government came to the county, and the county became the unit of representation in the legislature and the State agent in collecting State taxes and executing State laws. A *Board of County Commissioners* — usually three men — has charge of the business and buildings of the county, deciding on improvements, purchasing of supplies, making contracts, appropriating money, issuing bonds, licenses, etc. The Commissioners are to the county what the legislature is to the State, except that the Board of Commissioners is an administrative rather than a legislative body; it acts under the law and administers affairs for the county as the legislature directs, but the interests of the county are in the hands of the commissioners so far as local powers extend. The Commissioners are elected by the voters, either in districts of the county or at large.

The County Officers and their Functions

The County has a number of other officers: Auditor, Clerk, Treasurer, Sheriff, Coroner, Recorder, Superintendent of Schools, Prosecuting Attorney, the latter being in some instances the public prosecutor for a circuit of counties.

The *Sheriff* is the most important executive officer of the county. He is usually elected by the voters for terms ranging from one to four years. He is charged with the duty of keeping the peace, attending upon the court and carrying out its orders. He may have to hang a criminal, to seize property and sell it for taxes, or to carry out a judgment of the court, to arrest offenders and put them in jail, or to defend a prisoner against a mob, or to preserve order and protect property in times of strikes and riots. He may appoint deputies to assist him, or in times of emergency he may summon the bystanders, or the *posse*

The Sheriff

comitatus, which consists of the able-bodied male citizens of his county, and it then becomes the duty of every such citizen to aid the sheriff in executing the laws and maintaining the power and dignity of the State; or he may request the Governor to send the State militia to his aid if the violators of the laws are too powerful to be overcome by local means.

The County Clerk

The *County Clerk* acts both as Secretary of the Board of County Commissioners, to keep the minutes of the business, and as a clerk to the Circuit or County Court to keep a record of all court proceedings. The clerk's office should contain a record of all county contracts, bids for public buildings, election notices, marriage licenses, saloon licenses, the docket of cases to be brought to trial, warrants and writs issued and judgments entered, and all papers and records which the court wishes to file.[1] The county clerks are usually election officers, whose duty it is to give notice of elections, take charge of the ballots, and keep election records. The county clerks are usually elected by the voters for varying terms in different States — from one to four years — but in some States they are appointed by the Judge of the court.

The *County Treasurer* receives and takes care of the county funds. For the safety of these funds he is usually placed under bond to insure the county against loss because of any malfeasance or incompetency of the treasurer. Many States now provide that the public funds shall be deposited in approved banks under security, the interest accruing therefrom to come to the public treasury. The Treasurer's office in a populous county is very lucrative if the Treasurer is allowed to retain for himself the interest he receives from the banks on public deposits. The county Treasurers are usually elected by popular vote.

The County Auditor

The *Auditor* is the accountant of the county. His books are intended to check up the accounts of the Treasurer's

[1] In some States the clerk for the Commissioners and the clerk for the judicial court are two different officers.

office and other offices. The Auditor issues the warrants on the Treasurer for the payment of all bills, and his books should show all expenditures and receipts of public money. Some States provide for State accountants to inspect and correct the books of the counties. In many counties the Auditors, elected by popular vote, may often be good campaigners in getting votes, but not competent bookkeepers and the public accounts, upon inspection by experts, are found to be in confusion, even where no dishonesty has been intended.

The County Recorder

The *County Recorder* has charge of the legal records of the county, — the deeds, mortgages, leases, releases, etc. He is sometimes called Register of Deeds. Sales of, and mortgage claims to, real estate must be made a matter of public record in indexed volumes, in order that the ownership of property may be readily traced.

The County Superintendent of Schools

The *County Superintendent of Schools* has general oversight of the public schools of the county — not so much of the schools in the cities and incorporated towns within a county which have their own superintendents, but. chiefly of the rural schools. He examines teachers, issues licenses to teach, visits the schools, directs county and township teachers' institutes, makes statistical reports of the county schools to the State Superintendent of Public Instruction, and, in general, seeks to promote public education in the county. In some States he is elected by popular vote, in others by county boards of education, consisting of Township Trustees, or local school officers.

The County Coroner

The *County Coroner* has for his chief duty the holding of inquests upon the bodies of persons whose death may have been caused by violence or unlawful means. In such cases it is his duty to hold, not a trial, but an inquiry, and for this purpose he may summon a jury, and such witnesses as may be able to testify, and may have medical examination made in order to ascertain the cause of death. The Coroner

is usually elected by popular vote. As a rule he succeeds to the office of Sheriff in case of a vacancy in that office.

A *County Surveyor* is provided for in some States to make surveys of land and highways.

The County-township System

The *County-township* system is a mixed or compromise system of local government, between the Southern county and the New England town. The township of the Middle West, which corresponds, in a way, to the town of New England, had its beginning in the Ordinance of 1785, which provided for the survey and sale of western lands ceded to the United States by the several States that had claim to these lands. By this Ordinance the public domain in the Old Northwest was divided, or surveyed, into townships, each six miles square, each township containing 36 sections of 640 acres each, a section being a mile square. This system enabled the settlers, or "homesteaders," to locate their claims with ease and accuracy, the sections being located by north and south lines or ranges. Each section is easily subdivided into tracts of 320, 160, 80, and 40 acres. It was the Ordinance of 1785 which provided that one section (the sixteenth, near the center) in every township should be reserved, to be afterwards sold for the support of public schools. This was the basis of the Congressional Township School Fund for these States, a rich legacy for school purposes. It was also provided that a whole township in each State to be subsequently admitted to the Union should be reserved for a university. This became the early support for the State Universities of the Northwest, where the great State Universities took their rise.

The Land System: The Congressional Township

As new States were formed in the Northwest the county plan of local government was first adopted, owing to the scattered population and because the earliest settlers were largely from the South. But as the township laid out by the

Congressional survey was recognized for school purposes it was made a political or civil unit in the local government of these States, for the purpose of attending to local schools, building roads, caring for the poor, and preserving order by means of justices of the peace and constables. The township government grew up about the local schoolhouse as that of the New England town about the church. The school districts in the western township grew in number as the township grew in population. Later settlers coming to the West from New England and the Middle States (New York, Pennsylvania, New Jersey), following lines of latitude, as a rule, settled in Michigan, Wisconsin, Iowa, Northern Indiana, and Illinois. These had been used to the *town* system of local government. The New York system of town (or township) Supervisors made these town officers members of a county board for supervising county affairs. The Pennsylvania system emphasized the county as the basic unit for local government. It subordinated the township and provided for a Board of County Commissioners to take care of county affairs, elected by the county at large or in a district of townships. These two systems came into the West, one type prevailing in the northern tier of Western States and the other in the Southern tier, and in most of the Western States they are now combined into what is called the county-township system. That is, both the county and the township are used as important agencies in local government.

Township Trustee

The Township Trustee, or Supervisor, is one of the most important of local officers. He is the business manager of the Township, has charge of its funds, and, in some States, may levy assessments, appoint teachers for the rural schools of the township, and is overseer of the poor and of the business of poor relief. Some States provide for a Township Board to levy taxes and control expenditures and Township Assessors and Clerks to attend to the duties related to such offices.

Benefits of Local Government

Importance of Rural Government

In spite of the great and rapid growth of cities in America, the majority of our people still live in rural communities. There may still be found the more stable elements of our people, the "bone and sinew of the land." From the country come the best lives and the best blood for the up-building of our cities. Good government for our rural townships is as important as good government for our cities. The improvement in country schools, the growth of libraries, agricultural extension courses, Chautauqua courses, neighborhood meetings and community festivals, civic clubs and their discussions, farmers' institutes and the county agricultural agents, — all these influences are arousing a new civic life in the rural districts. The demand is rising that the taxes which the farmers pay for good roads and good schools and good government should show in the actual presence of these benefits. The movement for good roads illustrates the new growth of a vigorous civic spirit.

Road Building and the State

Road building as a public enterprise has been a wasteful extravagance in the past. Roads were formerly left to private enterprise or to local enterprise. Now it is coming to be recognized that road building is the business of the State and the nation. The old private turnpike, with its toll gate, at which toll was collected for every trip to town, is now only a lingering memory. In some States the county and township still have charge of road building and road improvement. Many States have not yet taken hold of this problem; they have established no public policy, no engineering plan, no rural highways or best routes. The State always has the power by the exercise of the right of *eminent domain* (a sovereign right of the State) to determine through one of its courts a reasonable price to be paid for private property and then to *condemn* this property for public use, if the owners refuse to sell it to the public at a price fixed by fair referees or umpires. In this way the State may lay out a road and private interests must give way.

Road making has now become a science. Farmers used to be allowed to "work out their road taxes" by a certain number of days' labor, with or without teams. It was slip-shod work; the roads were often made worse rather than better. It is now recognized that the cities and the richer portions of the State should help the poorer sections in the building of roads. The whole State is interested in the avenues connecting its several parts, facilitating transportation and communication. Roads to the State are like the arteries to the human body. There should be coöperation between locality and State, the county and township receiving from the State treasury money aid somewhat in proportion to what the local district is able and willing to pay.

Good Government in the Nation depends on Good Local Government

With good roads and good schools and other agencies for moral and civic education the rural communities will insist on law and order and good government. If every man sweeps the front of his own dooryard, the city will be clean. So if the country people can govern themselves well in every township in the land the nation will be well taken care of. But if, on the other hand, the people have not enough force, intelligence, and patriotism to take care of their own taxes and improvements and to provide for themselves good local officers for the sake of honest and decent government near their own homes they will not do much good in helping to govern the nation at large.

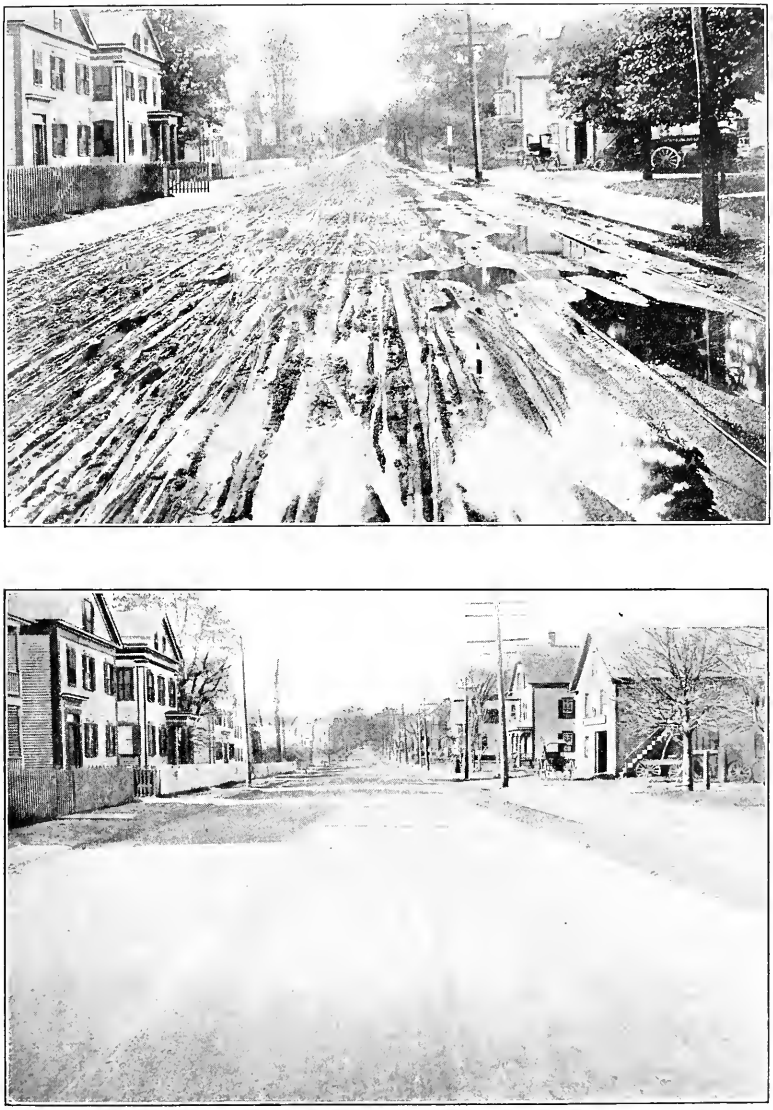
Connection between Country and City

As the city depends on the country for its foodstuffs and supplies, so the country people depend on the cities for many of their conveniences and means of living. The trolley cars and telephones and mail orders are managed in the cities and most of the supplies and nearly all the wearing apparel of the country people are made in the great factories and are put up in the big supply houses of the cities. We are all interested alike in the good government, the state of taxes, and the conditions of labor in the great centers of population. The prices and the quality of goods bought, and the health of

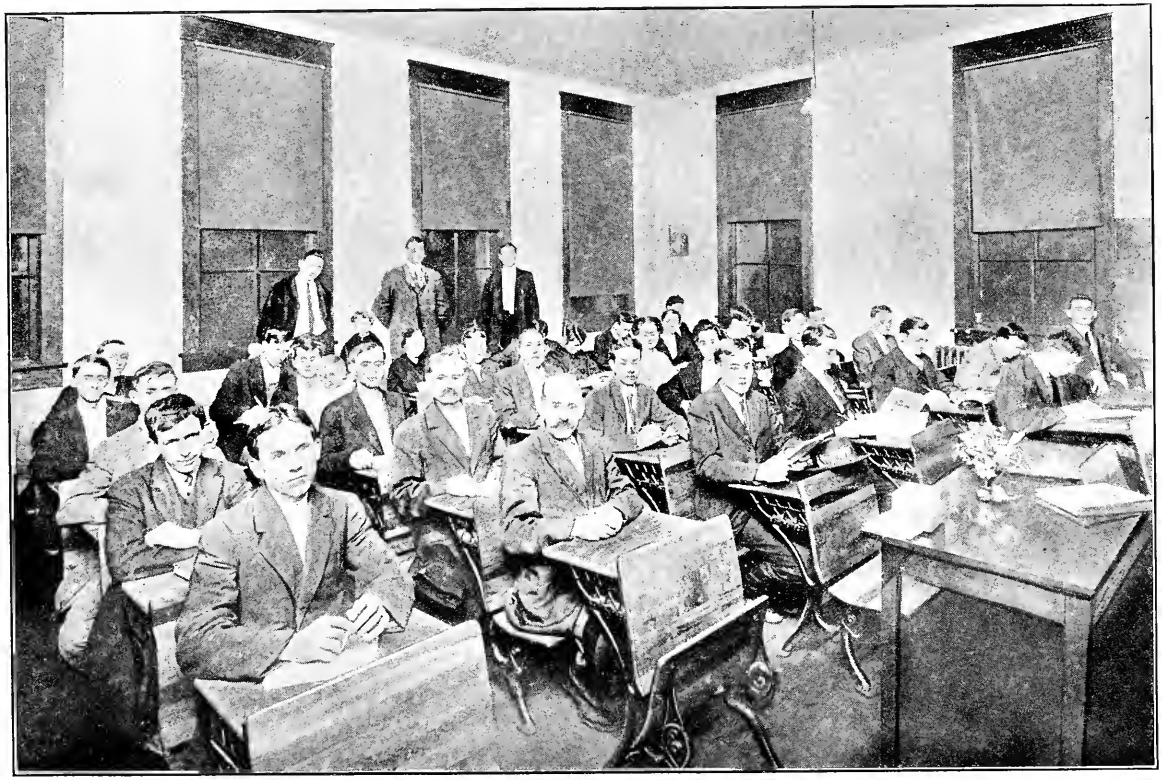
the consumers, may depend on these things. Railway rates; the conditions at grade crossings; telephone charges; the control of trusts; the kind of money we have; interest rates on farm mortgages (mostly held in cities); whether banks and trust companies are well managed; whether transportation is easy or difficult; whether wheat is "cornered," or meat prices fixed by combinations, — in all these things the farmers are just as much interested as city people. Most of these things depend, in large measure, on honest and faithful government, on whether or not the officers act for the benefit of a few or for the welfare of all. Therefore the farmers should be constantly and vitally interested in matters relating to taxes, roads, illiteracy and crime, poverty, the evils of the saloon, health laws, causes of disease, conditions among foreign laborers, freight and passenger rates, reforestation, and the use of waste lands. Rural voters and city voters are mutually interested and they should act together to work for progress and betterment in all these respects.

Rural Community Centers

In these days of modern improvements, of better roads, of easier travel and communication, with the rural telephones, automobiles, and electric railways, there is a tendency to organize community centers in the country. In some States and counties the farming people live in villages or small centers of population and they go out to manage their farms in the day, which may be several miles away. In this way the farmers' families escape isolation and may enjoy the social life and the better educational opportunities that may come from the neighborhood group. School districts may be united, and the country children may be brought to school from long distances and taken back home by public conveyances at the least possible expense; a good high school may be established; circulating libraries may be maintained; playgrounds and healthy recreations for the country boys and girls may be promoted; the gangs of "toughs" may be restrained; public utilities — lighting and water — may be



A Road before and after Improvement



Beginners' Class in a Moonlight School, Knox County, Tennessee

better supplied; entertainments, public meetings, addresses and exhibitions, folk dances and moving picture shows may be enjoyed, and all kinds of social and public activities may be better exercised. It is proposed that the community center may be made the means of organizing a coöperative enterprise for buying and selling among country people. The schoolhouse, even where there are not populous villages, may become the social center where mutual benefits may be enjoyed and where the light may shine for all. Village conditions may be improved; a "clean-up week" may put the streets and sidewalks and yards in better shape; tumble-down shanties and outhouses may be removed, noxious weeds cut down, and farm homes and the countryside may be beautified; and thus the attractions and good government in rural life may make the country the most desirable of all places in which to live.

TOPICS AND PROBLEMS

For "original research" in "Community Civics" the student may be asked to report on some such inquiry as the following:

1. What have political parties to do with local community affairs?
2. How are the taxes assessed, collected, and expended? Do all persons in the community pay taxes? Why?
3. How may the smoke and dirt nuisance be abated in the city? or the roadside or school grounds be beautified in the country?
4. How should the local press help to promote the welfare of the community? What other agencies may be used for community betterment?
5. What need is there in your community for better housing?
6. How does the State help the local community in protecting life and property?
7. How can public spirit be cultivated in a community? Or, how can more citizens be induced to take an interest in public affairs from unselfish public motives?
8. Debate: "Resolved that local self-government is more important and beneficial to the people than the growth of national powers."
9. In what ways is the election of a Township Trustee or a County Commissioner more important to the people than the election of the President of the United States?
10. How may a "community center" be of service to the community? How can you help the "center"?

The teacher should make up a set of questions especially adapted to the county and township in which the school is located, such as, In what county do you live? What is the origin of its name? What are its leading industries? Its population? Its area? Its boundaries? Its county seat? What counties border upon it? What county in the State has the largest area? The smallest? What is the debt of your county? The tax rate in your county, etc.? See Clark's *Outlines of Civics*.

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Ashley, Roscoe L. *The American Federal State*, Chap. 20, pp. 386–402.

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Forman, S. E. *Advanced Civics*, Chaps. 26–28, pp. 195–214.

Guitteau, William B. *Government and Politics in the U. S.*, Chaps. II and III, pp. 14–37. "Origin, Structure and Functions of Local Rural Government."

Hart, A. B. *Actual Government*, Chap. 10, pp. 167–179, "Local Government in Action."

In "Community Civics" the student must find his references in the civil life of the community. He may not only study real community life as it is, but he may become a useful part in that life. For suggestions and topics, apart from this text-book, consult the following:

A. W. Dunn's *The Community and the Citizen*.

Hughes, R. O., "Community Civics" (1918).

Public Service is a leaflet published weekly (50 cents a year, 51 Chambers Street, New York) which gives vital suggestions on current questions and civic problems. *Equity*, published quarterly, 50 cents per year (1520 Chestnut Street, Philadelphia), is "devoted to improved processes of self-government and whatever methods tend to increase efficiency and democratic control in national, state, and city government."

The publications of the "American Civic Association" deal with city planning and community life, in town and country, and they may be had for prices from 5 cents to 25 cents (914 Union Trust Building, Washington, D. C.).

A Handbook of Civic Improvement, by Hermann G. James, and Bulletin No. 28, U. S. Bureau of Education on "The Social Studies in Secondary Education."

Further treatment of community civics is found in the chapters of this text on "City Government," "The Citizen: His Rights and Duties," "Present-day Problems in Democracy." Ample references follow these chapters. For "How to obtain Further Information," see p. 397.

CHAPTER V

CITY GOVERNMENT

THE city is the village grown large. How large must it be to make a city? The United States Census Bureau recognizes a population of 8000 as the necessary minimum. Some States will incorporate a population of 1000, within a limited area, and make it a legal city; others require 5000. As the city grows in population its government becomes more complex and special provision is needed for it. It cannot be governed by a gathering of its voters, like a town meeting. It must have a special charter (or some provision of law), organizing its government, conferring upon it special powers and privileges, providing for certain officers and public boards and defining their duties.

How many People make a City

The Problem of the City

A multitude of affairs and problems have come upon the city which the towns and rural districts have never known, and city government has become so difficult and unsatisfactory that one writer has called it "the one conspicuous failure of the United States."[1]

REMARKABLE GROWTH OF CITIES

City Life in America

One of the most remarkable facts in our recent history has been the growth of our cities. In 1789 there were but six cities in America with a population above 8000, and there was only one with a population of as much as 33,000. Less than four per cent, or one twenty-fifth, of the people lived in cities.

[1] Bryce. These problems and failures have come partly because of the rapid growth of our cities, partly because of the character of their populations, and partly because of their complex industrial and social conditions.

The people lived in the country or in small towns and villages. Now, according to the census of 1910, there are more than five hundred cities each having a population of at least 8000, and there are more than fifty with a population of over 100,000. Nearly half of all the people live in cities; and in some States, like Rhode Island and Massachusetts, about nine tenths of the people live in cities. New York City has a greater population than all the rest of New York State, and nearly a million and a half more than all the State of Indiana together. Moreover, this growth has been so rapid that it has been almost impossible for the cities to adapt themselves to it and meet their increasing needs.

New York City grew from a population of about 50,000 to over 4,000,000 in a hundred years. In a little more than ten years, (1900 to 1910) Detroit received nearly 500,000 of new population, owing largely to the automobile industry. In the same time Schenectady, New York, more than doubled its population. There are many other striking cases of rapid increase. Within the memory of men born and still living within her limits, Chicago has changed from a little prairie village to a teeming center of more than 2,500,000 people.

Character of City Population

And it must be remembered that from one fourth to one third of the people in many of these great cities are people of foreign birth, many of them unable to speak the English tongue. Large numbers of all races and nationalities are segregated in groups and districts; the populations are constantly shifting and the people in the same block are often unknown to one another. The criminal classes have their dives in the city; the dependent poor are more numerous; there is a wider division between the rich and the poor and a sharper conflict between classes, whose methods, conditions, and ideals of life are very different. So, altogether, the city presents quite a different problem from that of the town or country district.

Causes of City Growth

There are many reasons why the city has outgrown the country in population. The increased immigration has come mostly to the cities (see pp. 67–73). Sanitary conditions have been improved, so that the death rate has been lowered, and the population increases from within as well as from without. Labor-saving machinery for the farms has made it possible that fewer people are required to stay in the country to cultivate the land. Cities are the centers of trade, of business opportunities, of shipping and manufacturing. Increased transportation facilities, the growth of steam and electric railways, the increased use of machinery and the rise of great factories and commercial houses, — these influences have promoted city growth by leading to an increased demand for city workers.

Within twenty years, while foreign immigration has been at high tide, our country has undergone an economic development so wonderful that it is almost impossible for the mind to grasp it. In this period our population has increased about 50 per cent, but within *ten* years the output of our factories has more than doubled, while within the period of twenty years the production of coal (the means and measure of this economic activity) has increased three times as fast as the population. This means that our increased population has been drawn rapidly and constantly to the industrial centers where this economic activity has had its life, — in the factories, in the stores, in trade, in shipping, and in all building occupations. Moreover, young people leave the farms and smaller towns on account of the greater opportunities and attractions in the cities, — there are better schools, larger churches, better theaters, more amusements, conveniences, and social pleasures. These are some of the influences that have led to city growth.

Undesirable Conditions in City Life

The result of all this is that the greatest cities have become overcrowded. The people are herded together in compact masses; there is hardly breathing room; and while wealth

increases for a few the many suffer poverty. City land values are abnormally high and comparatively few people can own their homes.[1] They have, therefore, less *interest* in the community and are less disposed to promote its order and good government. Overworked and underfed toilers live in poor tenements and work under hard and unhealthy conditions. If, as is the case in some of our cities, four or five persons have to live in one room and fifteen or twenty in one tenement house, and 1000 persons to the acre, and nearly 300,000 persons to the square mile, — they cannot so live without danger to their health, comfort, and morals. So, as we see, extremes come to meet in our cities. Progress and poverty are found together, — high living and a ceaseless struggle for a bare existence. On the one hand we find all the comforts, conveniences, pleasures, and luxuries of life, while near by one finds the most degraded and wretched misery. Here we find the millionaires, the helpless tenants, and the tramps; the rich capitalists, the Socialists, and the anarchists. Witnessing these conditions, many persons have come to look upon our cities as dangerous places, like "plague spots" in our national life, as the haunts of the dangerous and criminal classes, both the criminal rich and the criminal poor. Consequently, a movement has begun to encourage population to go to the country. Electric lines enable people to live in the country and do business in the city; country life is made more attractive; good roads are built; the telephone reaches to the farmhouses; rural mail routes are established; social centers are formed; good central high schools are provided; farming knowledge, facilities, and profits are increased, — these and other influences are urged as reasons why people should go "back to the farm."

The Cry of "Back to the Farm"

[1] By the Census of 1900 more than 64 per cent of the families of the United States living on farms owned their own homes, while in New York City the proportion was only from 6 to 12 per cent.

Problems of City Government

The increasing Business of the City Government

In spite of all these influences city populations of all sorts and conditions of men continue to increase, and the city finds itself forced to attend to a multitude of things. It has to arrest and punish crime; assess taxes and regulate city finances; protect city property; abate nuisances; prevent the use of firearms and fireworks that might be dangerous to persons or property, or the storage of inflammable powder or oil, or other combustible materials; it regulates the erection of high chimneys and smokestacks, and requires the inspection of gas pipes, drainage, and electric wires. The city government is expected to afford police protection; care for the public health and prevent disease; provide a good water supply; protect the people against poor milk and adulterated food; afford fire protection; provide for public lighting; attend to culverts and bridges and street-paving and improvements, and keep the sidewalks in repair; license and regulate all kinds of street traffic; and enforce the speed limit on automobiles, so pedestrians may cross the street in safety; provide and regulate transportation facilities; regulate sewage and the disposal of garbage; and, in addition to all these matters of material interest, the city undertakes to maintain schools, libraries, hospitals, and museums.

All these things are matters for the *government* of the city to attend to. When we think of so many city activities, we see how complex and miscellaneous is the business of making laws for a city and administering its affairs. We are made to realize how, where so many people are living together, the interest and freedom of the individual citizen must be subordinate to the welfare of the community. It will easily be seen that if the city government is bad, neglectful, and inefficient, some of the most vital interests of the people will suffer. Good government for the city may almost be said to be a matter of life and death for its people.

Home Rule for Cities: Should the State govern the City?

Because of their necessities cities are given many powers of independent government. Yet the State laws determine in the main what the city may do and how it shall be governed, what officers the city may have, what their duties are, how its taxes are to be raised and its business administered. All the laws and privileges controlling the cities have to be obtained from the State legislatures.

In our State legislatures there are many country members who know from experience and observation very little about the needs of large cities. The country member can have neither the interest nor the knowledge to lead him to be a wise law-giver for the city. This practice of letting the State legislature govern the city has come down from the time when there were no large cities and no special city problems, from the days when "uniform laws" for all the communities of the State were reasonable enough, because conditions were nearly uniform in all parts and all communities of the State. But the modern city with its public utilities, complex activities, and numerous functions needs very different laws and regulations from those of a rural community. The city's interests, evils, and problems are now entirely different. Public utilities, special privileges, party machines, the liquor interests, and other evil influences that wish to control the cities, are willing to keep them in bondage to the legislatures, since these influences by their control of the political managers can more easily control the people. The consequence is that thousands of dollars of the city tax-payers' money are wasted and private interests are permitted to reap unfair gains. In some of the larger cities the financial budgets and expenses of their government are larger than the revenues of the State governments under which these cities exist. From 1903 to 1913 the moneys raised and expended by New York City were over four times as great as those of New York State. In 1911 and 1912, Chicago's government was 84 per cent more costly than the government of

Evils in keeping Cities in Bondage to State Legislatures

Illinois. The greater part of the people's taxes come upon them for city and local purposes. Does it not appear right that cities should be allowed to find their own sources of revenue and to determine for themselves their ways and means of improvement?

So it is contended that there should be "home rule" for cities, which means that in matters of purely city interests the city should be allowed to govern itself; that in its local affairs the city should be entirely removed from the legislature and its management be put into the hands of its own people, the city being allowed to provide its own improvements, to raise and expend its own taxes in its own way, and that the State should interfere as little as possible in matters of purely local concern. Some States have already provided, and all States ought to provide, that a city may by a vote of its people adopt a home rule charter allowing the city to govern itself in this way. This would be a great relief to the legislature and to the people of the State at large, because usually at every session of the legislature (which is elected to attend to the business of the whole State) a large part of the time of that body is taken up in considering the internal affairs of certain cities about which most of the legislators know little and care less. Cities should be given local self-government in harmony with long-standing American principles.

Unity and Control of the State in Local Government

This right of home rule for cities, or the right of local self-government, does not mean, however, that a city should be left alone to do as it pleases, or as its people may decide in all respects. Its home rule charter and its laws must be in harmony with the laws and constitution of the State. The city may have a natural growth and life of its own and its people should be allowed to govern themselves, but only in respect to those matters in which the whole State is not concerned. The same principle holds good in the local self-government of cities as in the local self-government of States. As no State has a right to govern itself in such a way as to endanger

the peace and safety or common welfare of the whole nation, so no city may disregard the common welfare and laws of the State. The city is still an agent of the State for doing certain things. The State should see to it that neither city nor county should be left alone to permit crime, to neglect the public health, or to license practices that promote poverty, immorality, degradation, and disease. There is much dispute as to whether a State legislature should pass laws regulating the hours of opening and closing saloons in cities, or whether that should be left to the local sentiment of the cities themselves. Within certain limits the State legislature must make laws for the control of cities, while the city is entitled to representation in the legislature. The city cannot cut itself off entirely from the rest of the State and be independent.

The State is a political unit and cannot be broken up into independent parts. The whole State of New York, or of Illinois, is interested in how New York City or Chicago is governed; how the city elections are conducted; whether its votes are fairly cast and counted; whether the city harbors criminals or fosters vice; whether its representatives in the State legislature are political grafters and crooks and unscrupulous bosses, or are honest men and upright citizens. How the cities are governed is of concern to the State. If the cities are to help make laws for the State, the State must be consulted as to the general laws that are to govern the city. While the State should not interfere with the purely local matters of the city, yet the State must determine what shall be regarded as crimes against society; what institutions affecting the life and welfare of the people shall be tolerated; how the elective franchise shall be safeguarded; and what shall be done to promote the interest of the State as a whole in the conduct and government of the city.

Common Type of City Government

City Officers

American cities have generally had their governments divided like our State and national governments into three divisions of government,—legislative, executive, judicial. This has been the ordinary type of city government.

The *City Council*, or Board of Aldermen, is the legislative branch of the city government, and acting with the Mayor, it attends to all the business of the city that we have named (see p. 114), or appoints Boards or agents to do so. The Councilmen are usually elected to represent the different wards of the city for terms of from one to four years, though in some cities the councilmen, or a part of them, are elected from the city at large. The City Council is generally a one-house body, though some councils have two houses.

The *Mayor* is the chief executive officer of the city. He is elected by the people to serve for a term of from one to four years and his powers are defined in the city charter. He usually has power to veto ordinances passed by the City Council and also the power to appoint the heads of the various departments of the city government. Sometimes his appointments must be confirmed by the City Council, but in many cases this confirmation is not necessary. Many cities give the Mayor the absolute power of appointment and removal and then hold him responsible for the government of the city. This plan may be made to work well; it depends altogether on the character of the mayor.

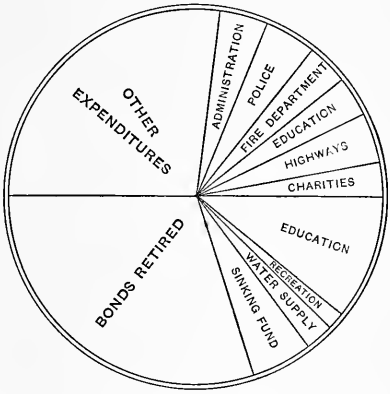
The City Administration

The work of the city government is usually divided up among several different departments. Prominent among these are the *Police Department*, the *Fire Department*, the *Department of Public Works*, which usually has charge of the streets and parks, and the *Department of Education*.

City Revenues

The many activities of the city make large amounts of money necessary. City taxes are usually high, but most of the tax money goes, not to the State or County, but to the city itself.

New York City raises more than $150,000,000 a year, and the city's expenses are equal to that of any one of several European countries, while the city debt of New York is almost as large as our national debt before we entered the world war. To raise and spend such large sums of money requires an army of officers, — boards, policemen, assessors, collectors, treasurers, auditors, etc. The city gets its revenue partly from a general property tax, and partly from other forms of taxes, like licenses on saloons and places of amusement.



CITY EXPENSES AND CITY DEBTS[1]

In 1911, 193 cities with a population of over 30,000 each, expended $1,647,700,000. The figures in the circle indicate the proportions and purposes for which the money was spent.

City Franchises

Franchises are now becoming a more lucrative source of city revenue. A *franchise* is a freedom, or permission, or privilege, to use some public property — like the streets, alleys, or sidewalks, or parks, for some gainful or commercial purpose or for a public enterprise. Gas companies, street railway companies, lighting

[1] From 1902 to 1911 city expenditures in this group of cities increased from 272 millions to 449 millions. The fact that 454 millions were used for paying off bonds, or debt payment, should not lead us to think that cities are paying off their debt. On the contrary the debts of this group of cities increased by 148 millions in 1913. New bonds offset the old. Much of this indebtedness had come from building water-supply systems which will be a source of wealth and revenue. Other items causing city debts are highways, school buildings and sewers. Most of our cities are increasing their permanent property and public improvements faster than their debts. But when we consider that the indebtedness of the United States is only $10.83 per capita (in 1913, before the war), while that of 146 of our largest cities is $67.31 per capita, it is time to consider municipal economy.

companies, telephone companies, etc., obtain franchises to use city highways, under certain conditions. These companies can afford to pay for or share with the city the revenues coming from the conduct of their business, since the use of the public streets gives value to their plants. A Chicago street railway pays more than half its net receipts to the city, and nearly all cities of any considerable size provide for such revenues. At times corrupt city councils have given away franchises that were very valuable, binding the city for forty or fifty years to a contract by which the interests of the city were betrayed, money lost, and taxes increased. Rich corporations have at times bribed city councilmen to betray their trust in this way and to sacrifice the city for private interests.

City Abuses

There are other serious abuses that people in the cities suffer to exist. The police service is sometimes corrupt, the members of the force accepting money from gambling houses, saloons, and other places of vice and crime for allowing these places to violate the law; that is, the policemen sell to the criminal classes the freedom to commit crime. This is always a low form of "graft," and in the larger cities it is very difficult to prevent. At times there have been regularly organized systems among the police for levying and collecting money from law violators for allowing them freedom from arrest and punishment. The chief of police may be merely the head of the corrupt forces receiving money for betraying the law-abiding people of the city. The Police Commissioners and the Mayor may find it difficult to break up this practice, or at times they may "wink at" and permit the abuse and share in the illicit gains. Such practices, of course, tend to disorder, anarchy, and the undermining of all law.

Police Abuses

Cities and Political Parties

Efforts have been made in recent years to separate city government from questions of party politics. There is no real relation between the matters that cities deal with and the issues dividing political parties in State and national affairs.

Yet the vital problems of the city have not been allowed to be considered on their merits, because the national parties have organized their city party machines, conducted city primaries and conventions, have nominated party candidates for city offices, and in city elections have sought to divide the voters on party lines. Party managers have sought to lay hold of the city patronage, i.e. the offices, and they have used the spoils of office as a means of keeping up the party and helping it to carry the State. These city party machines, acting together throughout the State, become a State-wide machine under the direction of some State boss, and they all work together in the State legislature for selfish or party purposes to prevent their cities from getting better charters and nonpartisan and more businesslike government. Sometimes partisan legislatures create, or abolish, Police Commissioners, or other Boards, and upset an entire city government in certain cities of the State in order to strengthen the party or to place the city election machinery under party control, thus flagrantly sacrificing the interest of the city to the interest of the party.

Evils of Partisanship in City Government

This "ripper" legislation is a good illustration of the evils arising from permitting the legislature to have full control over city affairs. Nor should the local party organization be allowed to control city elections or the city business. This is now being resisted by the commission form of city government (see p. 122) and by local independence among the voters, in order that city questions which are non-partisan, may be considered on their merits, with only the local and business interests of the city in view. To this end, city elections should be held as much as possible apart from national and State elections, and the party relations of the candidates should be disregarded by the voters. The city policies and interests alone should govern the voting. There is no Democratic way of removing city garbage or getting a good supply of pure water, nor a Republican way of safe-guarding the city health. Political parties are not divided on such questions as to whether there

should be a new high school building or whether the city streets should be better paved, or whether the police should enforce the law.

Commission Form of City Government

Business-like Conduct of City Affairs

There has always been an "orthodox type" of city government in the United States. It has rested on the old idea of the "separation of the powers." There must be a City Legislature (Council), a City Executive (Mayor), and a City Judiciary (Courts, Police Judges, etc.). All these officers and their functions, it has been thought, must be kept separate and distinct and the people must elect them all. Hardly a city in America departed from this idea until the opening of the twentieth century. The commission form of City Government disregards this theory. It holds that in administering the business of a city the division of powers has no place; that the work of the city "is business not government." The commission plan, therefore, abolishes the city council as a legislature on the ground that very little legislating is to be done by the city and that it is not laws but contracts and business arrangements that must be made and carried out, and it puts all legislative and administrative authority into the hands of the same group of men.

This plan of city government arose in Galveston, Texas, after the great tidal wave had flooded that city in 1901. "Prior to 1901 Galveston was one of the worst governed urban communities in the whole country. Under the old system of jurisdiction by a mayor, various elective officials, and a board of aldermen, its municipal history managed to afford illustrations of almost every vice in local government. The city debt was allowed to mount steadily, and borrowing to pay current expenses was not uncommon. City departments were managed wastefully; spoilsmen were put into places of honor and profit in the city's service. The accounts were kept in such a way that few could understand what the financial situ-

ation was at any time. The tax rate was high, and the citizens got poor service in return for generous expenditures. The outcome was that a considerable element among the voters had become discouraged with the whole situation and had ceased to manifest any interest in what went on at the city hall" [1] Almost the same thing might be truthfully said of the corrupt and inefficient conditions and practices in hundreds of other American cities.

Galveston could not obtain financial credit and rebuild its waste places under the old corrupt city government. The people asked the legislature to overthrow the old form of city government and put the powers formerly vested in mayor, council, and other officers, into the hands of a commission of five business men. The Galveston City charter of 1903 provides for the popular election, every two years, of five commissioners, all to be chosen by the city at large. One is called the mayor-president, who presides at the meetings of the commission, but he has no veto nor special powers. The commission by a majority vote enacts all city ordinances and passes all appropriations and supervises the enforcement of its own orders and regulates the expenditure of its own allowances. It handles all franchises and awards all contracts on public works, and sees to protecting the city against frauds. That is, this commission exercises all powers formerly vested in the mayor and board of aldermen. Four administrative headships or departments of the city are provided: 1. Finance and revenue; 2. Water and sewerage; 3. Police and fire protection; 4. Streets and public property.[2]

The Galveston Plan

The mayor-president is not made the head of a department, but exercises a general supervision over all, and each of the four other commissioners is made directly responsible, as head manager, for one of these important branches of the

[1] Munro's "The Government of American Cities," p. 295.

[2] The city schools are, as formerly, placed under the control of a separate school board.

city's business. Important appointments in each department are made by the whole commission, while the minor appointments are made by the commissioner in whose department the work lies.

This is the Galveston plan. It explains the commission form of city government. It was devised to meet an emergency, but when its working benefits were seen by experience it was retained as a permanent form of city government. Other cities of Texas, noticing the improved conditions in Galveston, obtained similar charters. The plan spread to other States, Des Moines, in Iowa, being the next to adopt it and adding some new features. In Des Moines five city departments are created, the Mayor being made the head of the Department of public affairs, and some of the newer democratic agencies of government are added, the initiative, referendum, protest and recall, and nominations by a nonpartisan Primary. The *Protest* affords a means by petition of delaying an ordinance of the city council or commission, until the people may have an opportunity to express themselves on it, by a vote for or against it. No public utility franchise is to be valid till confirmed by the voters.

As many as two hundred cities in twenty different States now use the Galveston Commission plan of city government or some modification of it. They are generally cities of less than 100,000 population.

Only seven cities with as much, each, as 100,000 population and only one with 200,000 had by 1913 adopted the commission plan. In almost all cases where the people have had a chance to vote on the plan they have adopted it, and no city has gone back to the old plan after trying the new. [1]

The terms of the commissioners vary from one to six years, the salaries from a few hundred to several thousand dollars. In some cities the distribution of the administrative work is made by the commission after it is elected; in others, each

[1] See Munro's "Government of American Cities," p. 302.

commissioner is elected for a particular department. The commission is not expected to be a body of experts, but it is expected to be able and willing to select experts to attend to the city business, surveying, engineering, road and bridge building, bookkeeping, assessing, the care of public health, etc.

"Under no plan of local government ought a second-rate engineer to be preferred to a first-rate lawyer or physician or banker or mechanic as supervisor of streets; yet he undoubtedly would have some advantage over the latter in any electoral contest where special qualifications happen to be thrust into the foreground. To look for specialized skill in the individual commissioners is to impair one of the strong features of the whole commission plan, which is the combination of strictly amateur with strictly expert administration, each operating in its proper sphere."[1]

Advantages of the Commission Form

Certain advantages are claimed for this system:

1. *It concentrates responsibility.* No system can avoid all faults and errors, but when these occur the blame cannot be any longer bandied back and forth between mayor and council. It will be definitely known upon whose shoulders to lay the blame. It will be the fault of the commission and, too, of a particular member of the commission and the remedy or punishment can be applied.

2. *It makes business methods possible.* Construction work, fire protection, auditing, piping water to a town, making and enforcing good contracts, all these are not matters of legislation but of business. They should be attended to in a sensible way by a competent board of business directors (commissioners) for the stockholders, who are the people and the tax payers of the city. The commission may simplify administrative machinery and promote efficiency, though, of course, the city is more than a mere corporation for commercial profits and must be governed with a view to public opinion.

[1] See Munro, "Government of American Cities," pp. 303–304.

A good honest business administration helps to educate public opinion.

3. *It reduces administrative friction and delay.* City councils are sometimes unwieldy. A small body that can act quickly, elected by the whole city, may be as truly representative as a large body elected by all parts of the town.[1]

4. *It improves the quality of city officers.* With business methods possible and responsibility and power concentrated, better men are induced to take charge of the city's affairs. City government, like all government, depends on the men chosen to administer it. Good men may do well under a bad system, but bad men will not do well under any system. A good system may help good men to overcome the bad.

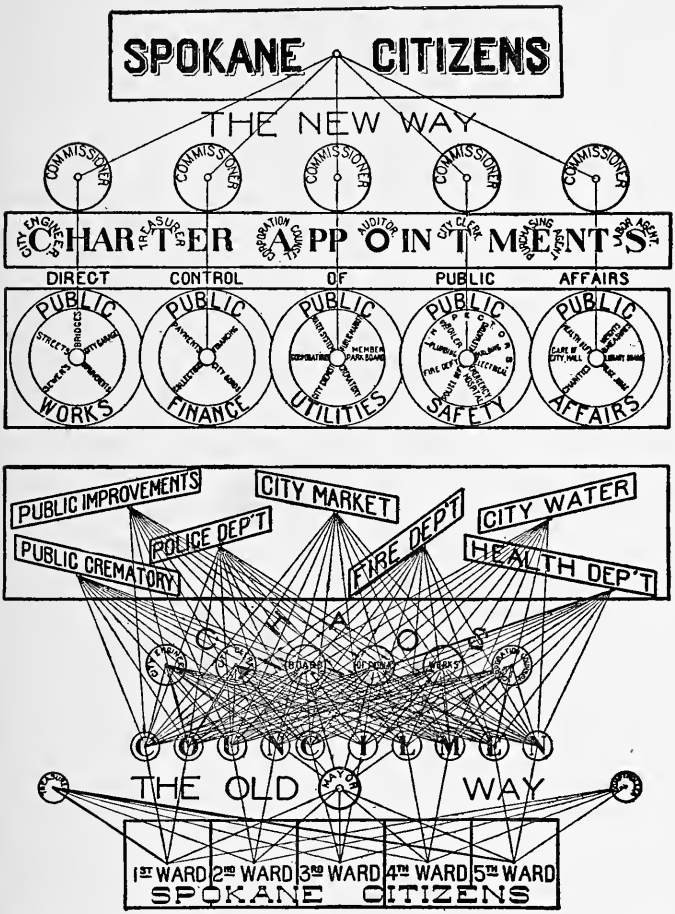
Objections to the Commission Plan

Objections have been raised to the new plan of city government. It has been denounced as undemocratic, un-American and oligarchic, as putting power into the hands of too few men. It is charged that it does not allow a representative city government; that it may promote rather than prevent corrupt control, since "the smaller the body the easier it can be reached and influenced." The liquor interests, or a large public service corporation, or the spoilsmen who are out for the "loaves and fishes," may, it is asserted, more easily buy or coerce five commissioners than fifty councilmen; hence there is safety in numbers.[2]

It may be that the commission plan will not achieve all that has been promised for it. It is still new, and it must always be remembered that no plan is self-executing or can

[1] Prior to 1909 Boston had 75 aldermen, three from each of twenty-five wards. Such a council will not be likely to show much "collective wisdom" but is likely to be dominated by party spoilsmen and to divide itself into a lot of standing committees with divided responsibility.

[2] In Munro's *The Government of American Cities*, p. 313, this objection is well refuted. Under the old system the corruptionist does not deal with the aldermen one by one, but with the five or six political bosses in the various wards, or perhaps with only one central boss who acts as the go-between in controlling the council.



ILLUSTRATING THE SIMPLICITY OF THE PRESENT CHARTER AS COMPARED WITH THE COMPLEXITY AND CONFUSION OF THE OLD WAY IN SPOKANE, WASHINGTON

dispense with civic righteousness and public spirit among the people. The commission plan should be connected with other reforms and features in city government, — nonpartisan nominations, the short ballot, preferential voting, the merit system, abolition of ward representation, publicity in official business, and the strict enforcement of good election laws. Eternal vigilance is the price of good government. Candidates backed by money and organization will always have a better chance than those that are not. But the people who are disinterested and not self-seekers should always be ready to avail themselves of every reform and device that will give them a better fighting chance against the forces of evil and corruption. As such, the commission form of city government deserves trial and attention.

The City Manager Plan

A Business Manager

The "city manager plan," which is sometimes called the "commission manager plan," involves the choice by the commission or council of a single man to manage the business of the city. It is an evolution, or an advance, from the commission plan, and it is based upon the idea that city administration has become a business or a profession, and must be managed by men experienced in city affairs. It recognizes the city's need of the expert for special city problems. It retains the essential reforms of the commission plan by which a small elective body is chosen by a nonpartisan election on a short ballot. The members of the commission may be chosen by wards, but it is considered better to have them chosen by the voters of the city at large. This commission chooses a business manager who becomes solely responsible for the honest and efficient conduct of the city's various departments of government. Under the usual commission plan each of the five commissioners takes charge of a department of the city's work, devoting his whole time on a substantial salary to directing his department. This gives a five-headed aspect

to the city's government. The city manager plan substitutes a single head who has control of the important appointments and removals, and who is responsible to the commission for results.

How the City Manager is Chosen

The "city manager" is not elected by the people but is appointed by the commission or council. He need not be a resident of the city at the time of his appointment, but may be selected from anywhere in the country, on account of his business and administrative capacity, and being responsible to the council he holds his office not for any specified term but only so long as he gives satisfaction.

Origin and Growth of the City Manager Plan, Sumter, S. C.

The little city of Sumter, South Carolina, with a population of a little over 8000, was the first city in the United States to use the city manager. In 1912 that city advertised throughout the United States for a city manager. The advertisement said:

"An engineer of standing and ability will be preferred.

"The city manager will hold office as long as he gives satisfaction to the commission. He will have complete administrative control of the city, subject to the approval of the board of three elected commissioners.

"There will be no politics in the job; the work will be purely that of an expert.

"A splendid opportunity for the right man to make a record in a new and coming profession."

There were 150 applicants for this city job in Sumter. A civil engineer from Virginia who had been in the employ of the Southern Railway Company was selected. In one year the manager had saved the city more than half his salary on one or two items of expenditure and by the cart service in the Department of Public Works he saved the city nearly $5000 a year.

After the flood in the Miami Valley in 1913, Dayton, Ohio, which had suffered severely from that overflow, adopted for itself an advanced city charter providing for a city manager.

Under the new constitution of Ohio, a city in that State was no longer required to go to the State legislature whenever it wished to make some change or improvement in its local affairs. So Dayton adopted a new charter for itself under which it might try out the manager plan. Dayton offered its managership with a large salary to Colonel Goethals, the builder of Panama. Colonel Goethals declined and the place was offered to Henry M. Waite, who was at the time city engineer in Cincinnati. Waite was a civil engineer, a graduate from the Massachusetts Institute of Technology, and he had been Division Superintendent on some of the large railways of the country. He had acquired a large knowledge of civic affairs, had become efficient in city administration, and was devoted to the idea of efficiency in public office. His platform was to employ men for their efficiency and not because of any political affiliation or in payment of any political debts.

The Dayton Experiment

Dayton is the largest city in the country to try the commission-manager plan (pop., 116,000).[1] It pays its manager a salary of $12,500. Staunton, Virginia, pays her manager $2500, Sumter, S. C., $3300, Springfield, Ohio, $6000. The larger salaries may endanger the plan. They are to be justified only on the ground that the manager by his economies can save the city much more than his salary without impairing the public service. In Manistee, Michigan, the city budget in 1913 was $104,000. The manager saved $20,000 of this and at the same time greatly increased the city's service, restoring ten miles of paved streets. The old government had authorized $80,000 on a new sewer. The new city manager spent $1200 to clean out the old one, removing tons of sand and refuse, and the sewer was found to be in perfect condition. The new sewer was not built. Such items of saving will justify a good salary to the right man.

[1] See Waite's "The Commission Manager Plan," in the *National Municipal Review*, Vol. IV, p. 40.

The powers of the city manager as seen from several charters of cities operating under the plan are as follows:

(*a*) He is charged with the enforcement of the laws and ordinances. To this end, he must control the Police Department.

(*b*) He administers the various city departments and is responsible for the results.

(*c*) He appoints and dismisses the employes whose work is essential to these results.

(*d*) He advises the council or commission, making written reports at the meetings, but has no vote.

(*e*) He estimates the financial needs of the city, and is the expert budget-maker and financial adviser of the commission.

(*f*) He has general powers of investigation and is the general agent of the commission.[1]

Managers are now being transferred from city to city, like city school superintendents. Jackson, Michigan, drew the successful manager of Big Rapids by an advance in salary, and Sherman, Texas, hired one from River Forest, Illinois. So the profession of city manager is becoming established.

The Model Charter of the National Municipal League arranges to have the commission appoint the City Civil Service Commission and the city auditor in addition to the manager, who is to make all other appointments. The Dayton charter adds the city clerk to the commission's appointments. In other cities, the assessors, municipal judges, and boards of education are appointed by the commission instead of by the manager. Some cities have put the police department beyond the manager's authority, also the city solicitor (attorney), city treasurer, purchasing agent, and sinking fund commissioners. This goes so far as to reduce the "manager" merely to a city engineer or superintendent of public works, and such cities should be excluded from those said to be trying the plan, since in them the city manager does not really manage.

[1] Toulmin's *The City Manager*, p. 90. See also "City Manager Progress during 1916" in the *National Municipal Review* for March, 1917.

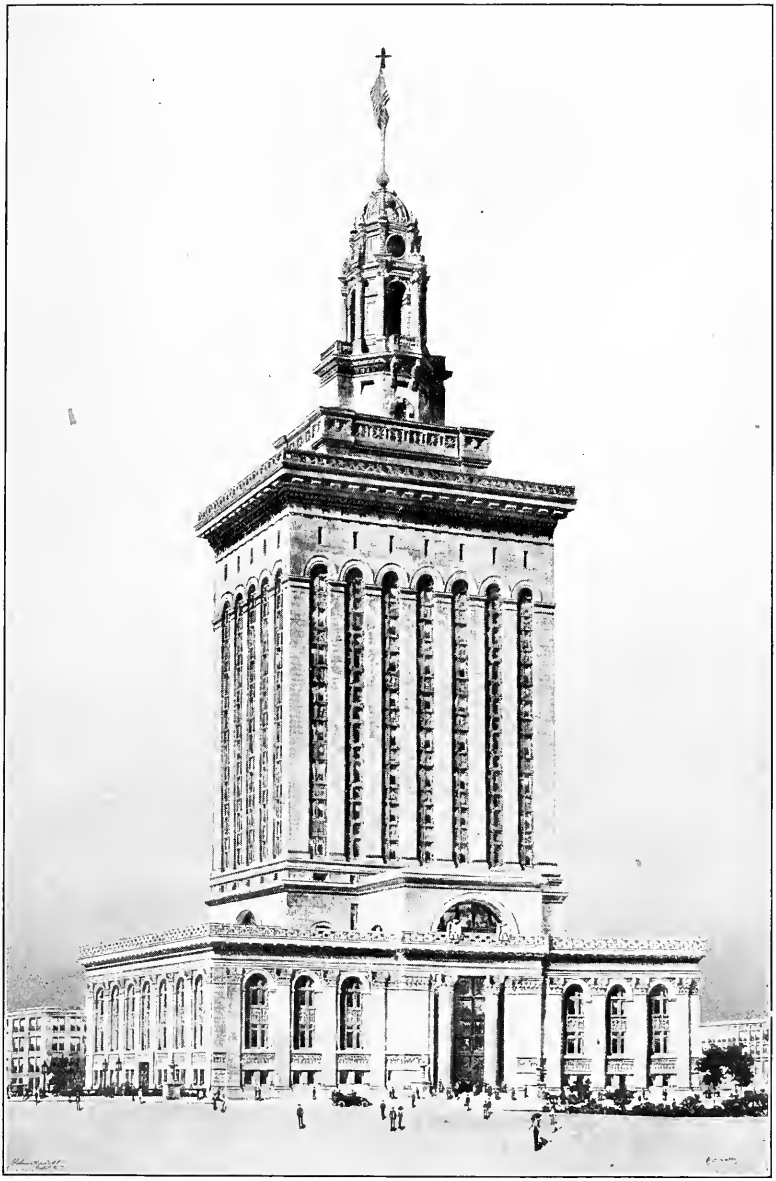
Municipal Public Utilities

City Control of Public Utilities

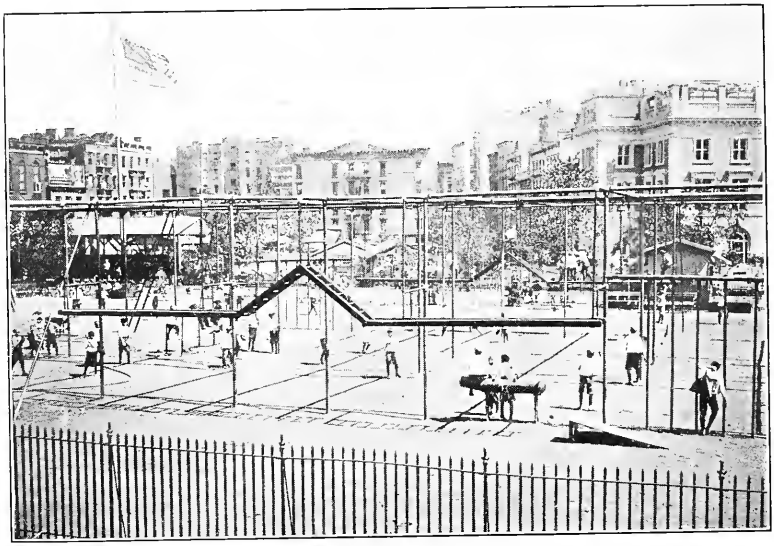
A *public utility* is an agency for supplying some public need or for giving some useful service to the community. Water works, gas plants, transportation facilities, telephone conveniences, are public utilities. If these are supplied by private corporations, the private companies are called "public service corporations" (see p. 88). They are private companies using private capital under private control, but it is recognized that they are to render a public service, and the public have more or less interest in and should have some voice in their management. The franchises under which private companies operate — that is, the grant by which they are allowed to use the streets — require certain services and returns. Abuses have arisen at times by these companies seeking to control the city council so as to obtain liberal, or loose franchises that are unfair to the people of the city and under which the companies may make undue profits.

Is City Ownership of Public Utilities Desirable?

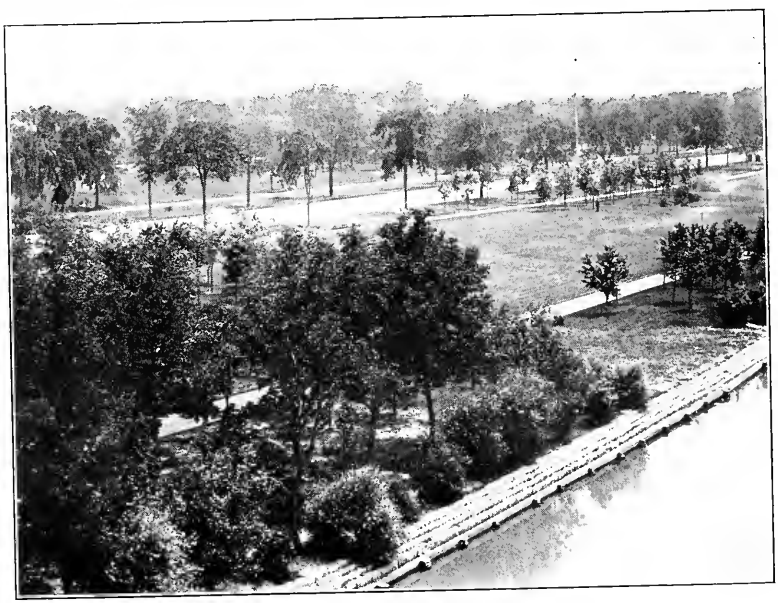
These abuses have led to a demand that cities should own or fully control their own public utilities, and take over the gas plants, water works, etc., and operate them as they do the police, fire, and school departments of the city. Of course this municipal ownership, or control, is to be brought about only after making fair compensation to the owners of the properties for money invested. It is claimed that under city ownership better and cheaper service would be furnished, as the public utilities, which are natural monopolies in which competition is not desirable or possible, would then be operated solely in the interest of the public and without the necessity of declaring large dividends to private owners. Some cities have had successful experience in city ownership, and some have been unsuccessful. Whether the public would be better served under municipal ownership depends altogether upon how the city is governed. If "spoils politics" and selfish interests prevail in the city council, or governing boards, and incom-



City Hall, Oakland, California



Seward Park Playground, New York City



Lincoln Park, Chicago

petent and corrupt politicians are elected to office, the public service will be neglected. But if the people are vigilant and intelligent and elect competent, public-spirited men to control the business of the city, then these public utilities, which should always be managed for the city, may be efficiently and satisfactorily managed by the people. It all goes back to the question whether the people will govern themselves well, or allow themselves to be misgoverned and mistreated.

Municipal Activities

Police Administration

It is the duty of the city police to enforce the laws, to preserve the public peace, suppress riots, to patrol the streets, to regulate street traffic, to compel the liquor shops to obey the law, to inspect places of public amusement, to direct and advise strangers in the city, and to do whatever else may tend to promote the good order of the city. The good policeman is always a friend to the law-abiding citizen and a foe to evil-doers. The police are controlled either by a Police Commissioner or a Police Board, appointed (usually) by the Mayor. Since the policemen are charged with enforcing State laws, some State supervision is usually exercised in their appointment and removal.

Public Health

The city has charge of many public activities. There is a City Board of Health, with a physician as director or secretary. It is the duty of the Health Department to make sanitary inspection of schoolhouses, factories, and public buildings; to control public ventilation, smoke consumption, drainage, sewage, and care of garbage; to control cases of infectious disease and to provide for isolation and careful disinfection; to regulate the sale of food products; to prevent the growth of rank vegetation, to promote city cleanliness, to inspect the health of school children, and to advise the people as to the best way to promote public health.

Public Recreation

In recent years most of the larger cities, and many smaller ones, have come to realize the importance of providing recrea-

tion rooms, playgrounds, and public parks ("breathing places") for their crowded populations. Tracts of land are set aside for public games and recreation; outdoor sports, municipal playgrounds, and park gymnasiums are provided. It is believed that such opportunities will promote the physical and moral welfare of the children and help to re-create the strength and energy of all working classes.

Charities and Poor Relief

In some places the relief of the poor is attended to entirely by private enterprise and organization, or by churches and religious societies; in some places, as in New England, it is always a municipal function; in some places it is a county function, while in some places the duty is attended to by the Township through the Township Trustee. In most cities there are *Organized Charities;* that is, societies which are organized and promoted by private benevolence and enterprise, though they are sometimes assisted by city authorities and city funds. The societies for *Organized Charities* seek to prevent duplication, waste, and imposition; to obtain admission of suitable persons to public almshouses and hospitals; to obtain medical assistance for the sick and outdoor relief for those who may be best helped in that way;[1] to maintain public employment bureaus by which the able-bodied poor may obtain employment and become self-supporting; and to assist the poor in their tenements toward better conditions and methods of living.

Poverty and Crime

Poverty, disease, and crime, because of the growth of great cities and their congested populations, present greater problems than private benevolence can care for. These problems are of public concern. Cities and States are now giving attention to them. There are State Boards of Charities as well as City Boards. These give attention to the pressing

[1] "Outdoor relief" is help given to persons in their homes as distinguished from "indoor relief," by providing for them in public institutions. Outdoor relief has been subject to much abuse and has in many cases tended to encourage pauperism.

problems of charities and correction; of crime and its punishment (criminology, penology); of prison reform; of providing for orphaned, destitute, or wayward children; and the study of the causes of poverty and its prevention. Students of these social problems and social workers, men and women who give their lives to the problems of charity, hold national conferences every year, and a valuable literature has arisen from their addresses and proceedings.[1]

Public Education

The whole problem of public education is under the control of the city, subject to the laws of the State. The schools of a city are its most important enterprise. On these are expended a very large proportion of its revenues, and in the welfare and efficiency of these schools the people of the city are most vitally interested. A Board of Education, or School Board, is elected either by popular vote or by the City Council. In some States this body is a separate corporation, or "school city" with a power to levy taxes, within a maximum limit, to supply the city's educational needs. In other places the School Board makes up a budget showing the educational needs and this may be allowed or modified by the City Council. The School Board attends to the business of choosing and buying sites for school buildings, of erecting and maintaining the buildings, choosing a Superintendent of Schools, and, under the Superintendent's advice, of appointing teachers and adopting courses of study.[2]

Welfare Problems

The City Slums and the Tenement Problem

One important problem before the great city is to abolish the "slums" and to improve the homes and the housing conditions of the working classes. The low, dirty back

[1] See Proceedings of National Conference of Charities and Corrections. Also Edward T. Devine's *The Practice of Charity*," and Charles R. Henderson's *Modern Methods of Charity*.

[2] See p. 114 for other activities and functions attended to by the city.

streets and lanes of the city, the mean hovels and crowded tenement houses, have not afforded decent places in which to live. Vice, crime, and drunkenness abound; epidemics of sickness occur; there is no home life, no privacy; and, therefore, decency and sanitary conditions are almost impossible. Fresh air, sunlight, and pure water are denied. The result of these "slum" conditions is that the death rate is high, especially among children, and the slum dwellers in their squalor and misery care nothing for the order and good government of the city. They are at once the victims of bad economic conditions and the instruments of bad city government. The "slums" present the economic problem of city regeneration which social workers and settlement workers and intelligent benevolence are trying to solve. Students of city government and social problems are learning from the conditions abroad and the better government of foreign cities. Glasgow, in Scotland, attacked the slum problem some years ago. It razed its slum shacks and erected new houses in the old slum area. The death rate, which had been 53 in 1000 every year, fell to 15 per thousand. In adjoining slums the rate remained at 53 per thousand.

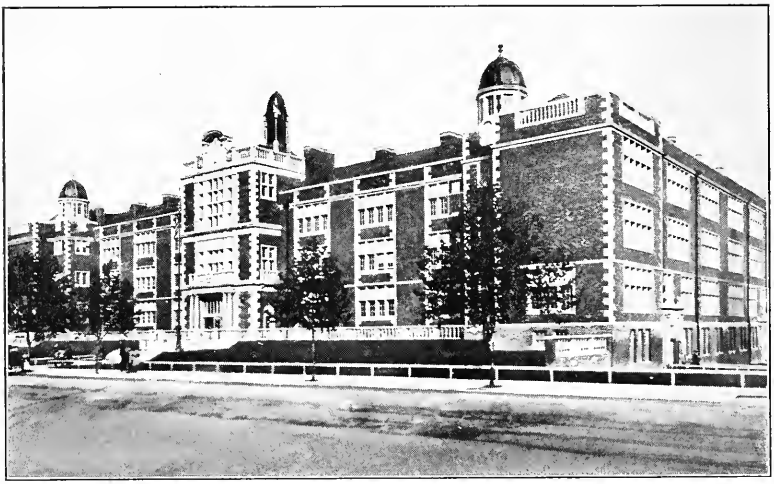
Nothing can be more important for a city than the conditions in which its people live, and it is this problem that now confronts the people of the city, not among the poor only, but chiefly among the rich and the well-to-do.[1] The whole

[1] The advanced student is invited to consider the economic causes and results of poverty. Bad economic conditions, poor homes, poor food, or not enough food, produce stunted, undergrown, ill-formed, and unhealthy people.

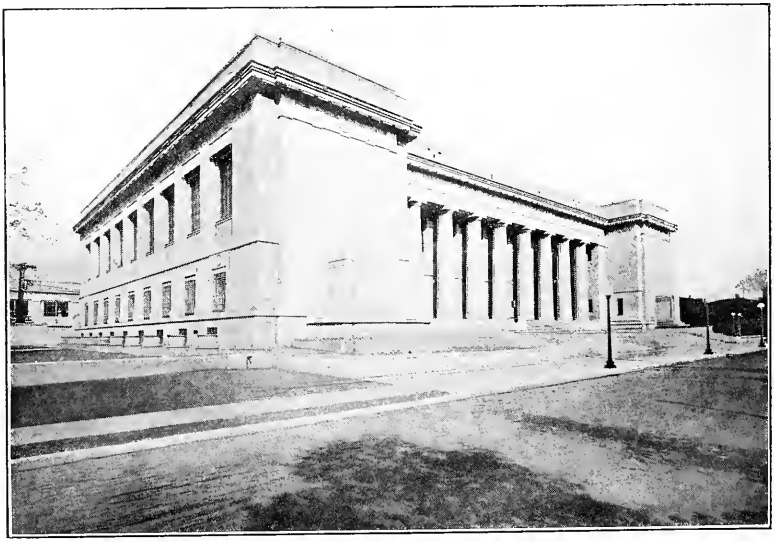
During the British Boer War in South Africa "about one half of the army candidates from London were rejected as below the military standard. In the enlistment stations in York, Sheffield, and Leeds, over 47 per cent were found to be physically unfit for service, while in Manchester, out of 11,000 men offering themselves for service in 1889, 8000 were reported to be so deficient in stamina and physical strength as to be defective." Frederick Harrison, in speaking of the sad housing and social condition of British workingmen says: "To

At the Milk Station, Mt. Morris Park, New York City

A City Dispensary



Soldan High School, St. Louis, Missouri



New Central Library Building, Indianapolis Public Library

city, the rich and powerful included, must be induced or compelled to provide city conditions suitable for the living of all the people.

The "City Beautiful"

Will the city be able to raze the slums and create the "City Beautiful"? The city has been looked upon as the failure and the fear of democracy. It has also been called the "hope of democracy." Hope will overcome fear, and our cities are destined to become monuments of American genius and invention and of the ability of the people to govern themselves. Active civic movements have not only to secure better government for our cities, but better economic conditions must be made to obtain a fairer distribution of wealth and better homes for the working classes. The cities will then be beautified and made fit places not only in which to trade and make money but for wholesome living and the enjoyment of life. More beautiful parks will be laid out, ample playgrounds provided, cleaner streets obtained, and finer boulevards and drives will be made. Safer factories will exist, better schools will be developed, central and branch libraries and museums will be provided, and vocational training will afford the people opportunity for culture and the children a better preparation

me it would be enough to condemn modern society as hardly an advance on slavery or serfdom, if the permanent condition of industry were to be that which we behold. Ninety per cent of the actual producers of wealth have no homes that they can call their own beyond the end of the week; have no bit of soil, or so much as a room that belongs to them; have nothing of value of any kind except as much furniture as will go in a cart; have the precarious chance of weekly wages which barely suffice to keep them in health, are housed for the most part in places that no man thinks fit for his horse; are separated by so narrow a margin from destitution that a month of bad trade, sickness or unexpected loss brings them face to face with hunger and pauperism . . . This is the normal state of the average workman in town or country." Are the conditions much better in many American cities? If America is to be saved from such conditions, how is it to be done? See Howe's *The City, The Hope of Democracy*; Haw's *Britain's Homes*, and *The Day's Work;* Jack London's *The People of the Abyss;* Robert Hunter's *Poverty;* Jacob Riis's *The Battle of the Slums*, and the publications of the *National Municipal League.*

for life. Cathedrals, art galleries, and fine monuments will adorn the city. City planning will be intelligent, the artistic side of the city will be cultivated, and extensions will be laid out with designs for architectural beauty. Great architects will be employed for city building and city improvement, and given freedom to work out plans to improve public squares and buildings or water fronts, and thus a city may be designed and remade into a vision of beauty and a joy to its people.

The planting, care, and preservation of trees; school architecture and interior decorations; home lawns and extensions; the safety of grade crossings; the abatement of smoke nuisances; the prevention of screeching whistles and unnecessary noises, — all these possibilities the "City Beautiful" will seek to attain. To this end there must be developed a city sense and a city spirit, a love and affection for the city, a devotion to its interests and a constant thought and effort to promote its welfare, a willingness to sacrifice one's self for its life and its betterment. It is in such lives of public devotion that we find good citizenship, and in such citizens we find the truest patriotism and love of country.

The constant need of the city is noble, unselfish, patriotic men and women. With these devoted to its service it will be efficient and beautiful; without them it will decay. "There is not a city government in America on whatever pattern organized which will not work well when administered by honest, public-spirited, capable, and well-trained men." [1] There is not one that will work well if bad and incompetent men are in charge. It should be the hope and desire of the children of our schools to bring devoted and efficient service to the cities and towns in which they live.

[1] Carl Schurz in the Proceedings of the National Municipal League, 1894, p. 123.

CIVIC CLUBS

"North Yakima, Washington, claims to be the cleanest city in the United States. Also it is one of the most progressive. For these distinctions it is largely indebted to its Women's Clubs. Although a small city it has such a club for nearly every department of civic uplift and a federated club with committees devoted to public health and happiness. These committees establish public parks and playgrounds, attend to the sanitary condition of schools and other public institutions, coöperate with the city health authorities for pure food and market cleanliness, fight flies, bring art collections to the city for study, and generally beautify public and private grounds. For example, one of these committees recently bought and planted several thousand rose trees throughout the city." (*Independent*, August 23, 1915, p. 257.)

This illustrates how voluntary agencies and efforts may cultivate better city conditions and promote better city government. The officers in a city will not do any better than public opinion demands, and public opinion will depend upon the activity and public spirit of private citizens. Civic clubs, women's clubs, commercial clubs, churches, school officers, health officers, — all should coöperate to keep the city and its politics clean and its government honest and enterprising.

TOPICS AND QUERIES

1. Debate: "Resolved that the evils under home rule for cities would be greater than under State control."
2. Debate: "Resolved, that nominations to city offices should be by petition and that no party ballot should appear in the election."
3. Debate: "Resolved that the city manager plan is better than the orthodox type of city government."
4. Why has the American democracy failed more in city government than elsewhere?
5. Why are city "slums" dangerous? How can they be abolished?
6. What are the police abuses in your city? How do saloons and criminal places influence the police? How is the police court conducted?
7. How are the taxes of your city raised and disbursed?
8. How may school children coöperate with the authorities in making the city beautiful?

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CHAPTER VI

THE STATES AND THEIR GOVERNMENT

The Importance of the State in the Government of the Citizen

THE American citizen is interested in his Nation. The Nation seems large to him. Its politics and elections, its public men and public questions, excite his attention, and he is familiar with his Nation's history and its great men. In whatever State or section he may be, he thinks of the United States as his native or adopted land and is proud to greet "Old Glory" as the flag and symbol of his beloved country. This is right. But when it comes to the laws and officers and methods by which he is governed the *State* is more important to the citizen than is the Nation. In all his affairs in which civil and criminal laws are concerned the State touches the citizen a hundred times where the Nation touches him once. All our ordinary civil obligations and the relations of citizens to one another are dealt with by the State.

"An American may, through a long life, never be reminded of the Federal Government except when he votes at presidential and congressional elections, buys a package of tobacco bearing the government stamp, lodges a complaint against the post-office, or opens his trunk for a custom house officer on a pier at New York when he returns from a tour in Europe." [1]

It is the State that really governs the citizen. Nearly all the citizen's taxes are paid to State or local officials acting under State laws. The citizen finds that it is the State which registers the births of his children, provides for their education and their inheritance of his property, makes laws and regulations for safeguarding their health or for licensing them

[1] Bryce, *American Commonwealth*, Vol. I, p. 425.

when they wish to enter a trade or get married. The court and police officers that look after the peace and order of the community, the trustees or local boards "that look after the poor, control highways, impose water rates, manage schools, — all these derive their legal powers from the State alone. In comparison with such a number of functions the Federal Government is but a department for foreign affairs."[1]

It will be seen that the possible offenses against national law are very few, against State law much more numerous. If a man becomes a traitor, or a pirate, or a counterfeiter, or a "moonshiner," or robs a post-office, or interferes with interstate commerce, or commits assault or murder on an American vessel at sea, he may be arrested and tried by Federal authority. Offenses against the national law may almost be counted on the fingers of one's hand. But the State law deals with the ordinary and more common violations of law, — murder, robbery, theft, burglary, bribery, bigamy, and divorce, offenses against the ballot, nuisances, malfeasance in office, violation of contract or any wrong or injury to person or property. Almost the whole civil life of the citizen is regulated by the State, or by municipal and local governments controlled by the State. Thus it behooves the citizen to understand his State government, to watch it constantly, and to do all that he can to see to it that the State does what it was created to do, — i.e. to safeguard the citizen's most precious rights and promote the public's highest interest.

Offenses against National Law compared with those against State Laws

State Constitution

Each State has a constitution of its own which is the fundamental law for the government and protection of the State. The original thirteen States while they were yet colonies had constitutions in the form of charters. These charters were granted to them by the King or by Parliament and they served as instruments of government, limiting the powers of their

[1] Bryce, I, 426.

officers and guaranteeing certain rights to their citizens. During the Revolution, from 1776 to 1780, all the States except two adopted new constitutions to take the place of their charters.[1] This was done by the independent action of their people, usually under the guidance of the Colonial Assembly. Thus the supreme power competent to create a constitution, which had abided in King and Parliament, now passed to the people of the several independent States.

General Provisions of a State Constitution

The State Constitution in every case at present provides for an Executive, or Governor, a Legislature of two Houses, and a Judiciary with a system of civil and criminal procedure. Each provides a system of local self-government in counties, cities, townships, and school districts, with a system of State and local taxation.

How a State Constitution is made

A State constitution is usually made by a State convention. The delegates to this convention are elected by the people (or by those authorized to vote under the existing constitution), and after the convention has drawn up and agreed to the constitution, it is submitted to a vote of the people for acceptance or rejection. If it is approved by the popular vote it will be declared in force and be put into operation by the proclamation of the Governor or by such means and forms as the new constitution will provide.

Power of Congress over a State Constitution

It should be understood that a State constitution is not granted by Congress nor does a State government derive its authority from that body but rather from the people of the State. Congress has influenced the character of a State constitution by imposing such conditions on the admission of a State as will lead it to conform its constitution to certain requirements, as was proposed in the case of Missouri when the House wished to require that State before its admission to provide in its constitution for the abolition of slavery, or as was done in the case of Utah when Congress required that

[1] Connecticut retained her colonial charter until 1818 and Rhode Island hers until 1842.

State to pledge itself to the prevention of polygamy. President Taft vetoed the admission of Arizona, requiring the people of that Territory to take out of their new constitution a provision for the recall of judges. After Arizona's constitution had been changed to meet this requirement the State was admitted. Soon afterwards the people of Arizona reinserted in their constitution the provision for the judicial recall, and there was no way to prevent it by any national authority. If Congress wished to punish a State for violating its pledges, it might deny to the State all representation in Congress, but that has never been done and is not likely to be. The people of a State may amend their State Constitution or adopt a new one at any time it may suit them to do so.

Amending State Constitutions

Every State constitution provides the method for its own amendment. Usually amendments originate in the legislature, though in some States they may be proposed under the initiative and referendum (see p. 36). The amendment, as a rule, has to pass both houses, perhaps by a two thirds majority, and then be submitted to the people for approval. The legislature may call a convention or ask the people to vote on the question whether or not they wish a convention, for the purpose of revising the constitution or making a new one.

There is no limit on the power of a State, and no national authority can interfere in its management, except that its Constitution and laws must be in harmony with the Constitution and laws of the United States. A Supreme Court decision may set aside a State law or even a part of a State's constitution, if either should be found to violate the Constitution and laws of the United States, and the President may interfere to enforce within a State the legitimate authority of the United States, even against the protest of the State authorities.

Original Powers retained by the States

All legislative powers originally belonged to the States. These powers are still vested in the State except such as are denied to the State by the Constitution of the United

States. The people of the States in forming the United States Constitution conferred certain legislative powers (expressed, recited, enumerated) on the national Congress, denying these to the States, but they retained to the States all others. Congress may therefore exercise only those powers that are expressly granted, or implied, and no others. But in forming their State constitution the people of a State do not *confer* legislative power on their legislature. They may deny certain powers to their legislature, but that body may exercise all legislative powers that are not denied. The "great residuary mass of powers," too numerous to mention, abide with the State legislature. He who claims for the State legislature the power to pass an act or establish an institution does not have to prove his claim; the power exists unless some one can show some line or language in the national or State constitution that prohibits it. The State legislature is free, sovereign, and supreme to act in its own way, within these limits. With Congress it is just the opposite. No powers belong to that body except those that are granted. Congress must prove by the Constitution the power it claims, but a State legislature need not do so.

In this explanation are found the constitutional limitations on legislative power in State and nation.

States' Rights, Duties and Obligations

The rights of the States are defined in several ways:

States' Rights defined

(1) Certain powers are withheld from them. No State may enter into any treaty, coin money, lay duties on imports or exports or pass a bill of attainder or ex post facto law, or grant a title of nobility. It is clear that such things may not be claimed by the States within their "rights," since the Constitution forbids these powers to a State.[1]

(2) Certain fields of legislation are granted to the national

[1] For other powers denied to the States see Article I, Section 10 of the Constitution.

Government, and "rights" within those fields may not be claimed by the States. The national Government has an *exclusive* right on these matters. That is, if Congress chooses to legislate on such subjects the States are excluded from doing so. But if Congress fails or refuses to exercise its authority, the States have a right to enter the field of legislation in question. For illustration, Congress is given power to pass uniform laws on the subject of bankruptcies. Congress is not bound to exercise this power, and if it does not, each State may pass a bankruptcy act for itself. But if at any time Congress chooses to legislate on this subject all the bankrupt acts of the States fall and are superseded by the act of Congress. This excludes and limits the *right* of the State.

(3) Judicial decisions and interpretations have limited and defined the rights of the States. Sometimes national authority, sometimes States' rights, have been upheld by the decisions of the Supreme Court, and to these decisions we must look to see what these rights and powers are.

(4) States' rights have also been defined by usage and important facts in our national life. The right to nullify an act of Congress and the right to secede from the Union have been claimed by some of the States. The greatest debates in American history arose over these "rights." It seemed impossible to settle by argument the great controversy that arose over the meaning of the Constitution on these points, but it has now been settled by the events of our history, especially by the great fact of the Civil War, that the rights of nullification and secession do not belong to the States. The power of the Supreme Court to act as the final judge of the Constitution and to tell what rights belong to the States and what to the nation is another illustration of these rights and powers being determined by usage and the events of our history rather than by written law.

(5) Certain positive rights and privileges are guaranteed to the States by the Federal Constitution:

(*a*) The right to a Republican Form of Government. This is guaranteed by the United States to every State in the Union. If rival governments are set up in a State, each claiming to be the rightful one, the one recognized by the Federal Government has always prevailed. As a rule the Federal Government will not interfere in such a conflict until circumstances seem to make it necessary.[1]

(*b*) The right to protection against invasion and domestic violence. No State may, of its own right, defend itself in war with another State or with a foreign power, unless it is actually invaded or is in such imminent danger as will not admit of delay.[2] Therefore the State has a right to rely upon the nation for protection in this respect. And when it comes to preserving peace and safety and law and order within a State, we find that the whole power of the nation may be arrayed. (As to the process by which the national Government secures this right to the States see p. 255.)

(*c*) It is the right of every State to have equal representation with every other State in the United States Senate, and of this right no State can be deprived except by its own consent.

(*d*) Every State has the right to its territorial integrity. No new State may be created out of the territory of one of the States, nor may any State be divided nor two States joined into one without the consent of the State or States concerned.

As States have rights, privileges, and powers, they also have duties and obligations.

(1) It is the duty of every State to surrender criminals or "fugitives from justice," escaping from other States, and taking refuge within its borders. The criminal is "extradited" from one State to the other, as a criminal may be from one nation to another. The Governor of the State *from* which the

[1] See Dorr's *Rebellion in Rhode Island*, and Woodburn's *American Republic and Its Government*, pp. 172–173.

[2] Constitution, Article I, Section 10, Clause 3.

Extradition of Criminals

criminal has fled, makes a demand or request (issues extradition papers) to the governor of the State *to* which the alleged criminal has fled, and it is then the duty of the latter Governor to issue a writ authorizing the arrest and detention of the criminal and his surrender to the sheriff or constable who comes from the other State to take the criminal back for trial and punishment.

There is no national law providing for the capture and return of a criminal fleeing from a State, and no State can be compelled to coöperate in the matter. But interstate comity (politeness and good will) has nearly always led to the fulfillment of this duty on the part of all the States. No State will refuse such a request from a sister State unless for some special or political reason. It was thought when the Constitution was made that interstate comity and good will would secure the return of fugitive slaves as well as fugitive criminals, but the anti-slavery spirit that afterwards arose, led many of the Northern States to refuse their good offices in this direction, and the South demanded a national Fugitive Slave Law to secure the return of their slaves. If the States should act in the same way toward fugitive criminals, a national Fugitive Criminal Law might be called for and passed, taking upon the national Government the duty which the States were refusing to fulfill.

(2) Another duty of the States is to give the same civil and political rights to the citizens of other States as they give to their own citizens. A State may not discriminate with its privileges and burdens in its treatment of citizens of the United States. It cannot, for instance, impose higher taxes on the property within the State that may be owned by citizens of other States than is imposed on its own citizens holding similar property.

(3) Each State is bound by the Constitution to "give full faith and credit to the public acts, records, and judicial proceedings of every other State." A will, a deed, an inheritance

The States are bound by one another's Acts and Judicial Proceedings

or bequest recognized in one State will be respected or enforced in other States. A record of naturalization in one State will hold good for all others. The facts brought out in a case at law and placed in the court's record will be recognized without retrial in any other State. If a couple are married in one State and have the record to prove it, they must be considered as legally married in every other State.

Duties of the States

Some duties of the States are taken for granted. It is, of course, their duty to elect Senators and Representatives to Congress, and presidential Electors (otherwise they would paralyze the national Government), to treat one another with respect, and to act as loyal members of the Union. Without loyalty and coöperation on the part of the States, the United States would cease to exist.

The State Legislature

Each State has a central government made up of three departments, the legislative, the executive, and the judicial.

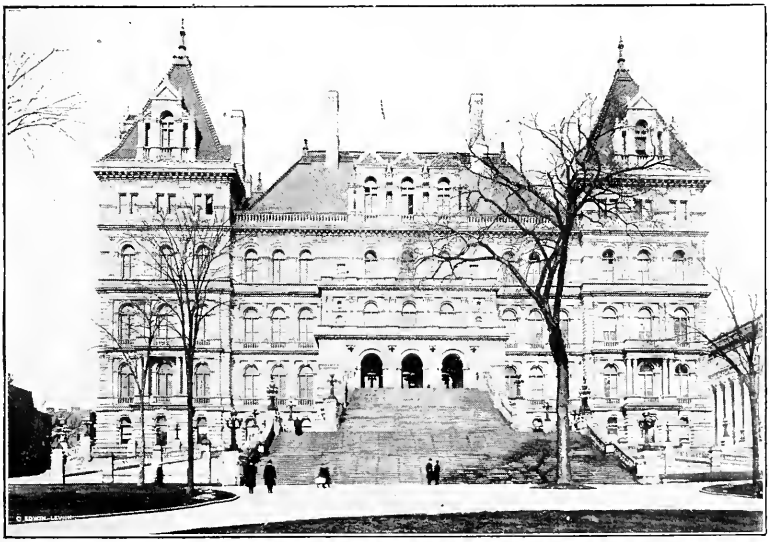
Form of the State Legislature

All the State legislatures are bicameral in form. The members of both houses are chosen by popular vote, by the same voters, but in electoral districts of different sizes usually. The upper house, or State Senate, is always fewer in number than the lower house, so the senatorial districts are fewer and larger than the representative districts. In a populous county, from which several members of both houses are elected, they may all be elected in a common ticket by all the voters of the county. The senatorial term is generally longer than that of the representative. If the representatives are elected for two years, the senators are elected for four years.

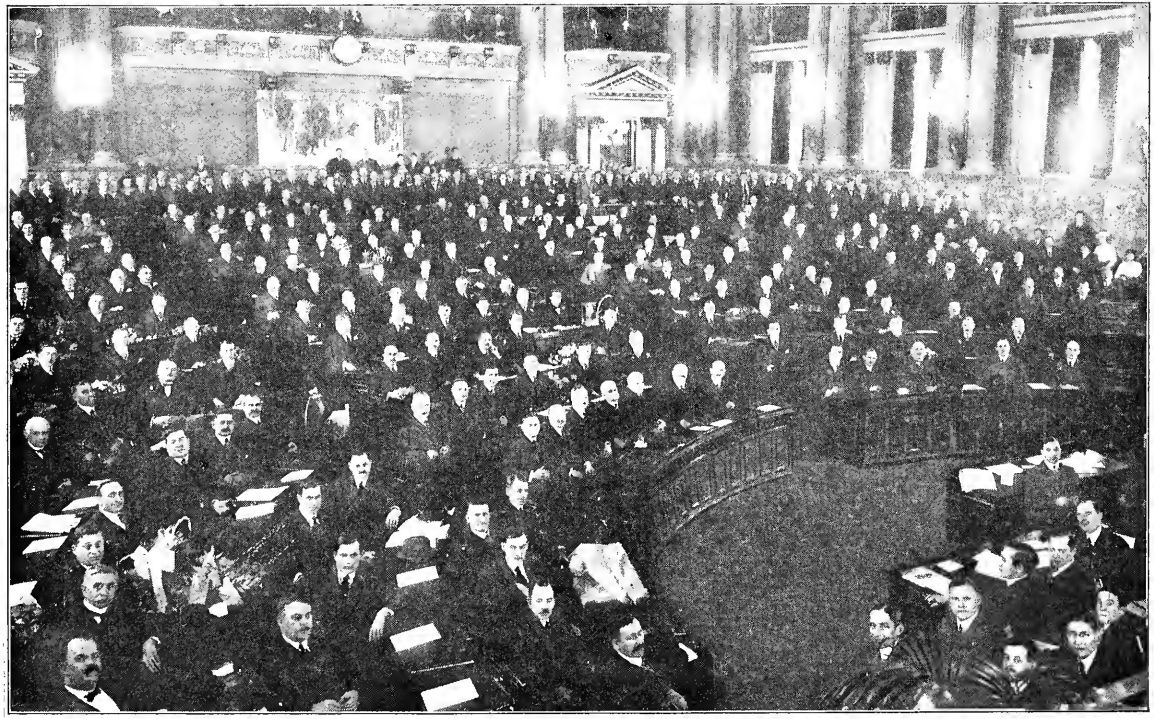
Permanent Character of the State Senate

The State senate, like that of the United States, is a "permanent body," half its members being in one class and half in another, so that half are old members or "hold-over senators" who sit in two consecutive legislatures. The eligible age of the State senator is usually higher than that of the Representative, and in earlier days when property was the

State Capitol, St. Paul, Minnesota



State Capitol, Albany, New York



HOUSE OF REPRESENTATIVES OF STATE LEGISLATURE IN SESSION, HARRISBURG, PENNSYLVANIA

basis of representation he was required to possess and represent more property.

Apportionment of the State Legislature

State senators and representatives are apportioned among the several counties of the State according to population and it is usually provided by the constitution that the electoral districts be equal in numbers of inhabitants, but the "gerrymander" used for partisan purposes often prevents fairness and equality. The county is usually regarded as the electoral unit and some State constitutions forbid that counties should be divided in making up electoral districts. In the Northeastern States the towns (or townships) are generally recognized as the units and provision is made for the representation of *towns* rather than numbers of people. This system has come down from early colonial times when settlements, plantations, and towns were represented on an equality in the legislature, the Assembly of the colony being somewhat like a federation of towns. With the rise of cities in the nineteenth century very great inequalities in representation came about, a big city like New Haven in Connecticut having no more representatives in the State legislature than a small town of 500 people.

Senators and representatives are required, either by the law of the Constitution or by custom, to live in the districts which they represent.

Size of State Legislatures

State legislatures vary in size, from fifty-two in the whole legislature of Delaware (seventeen of these in the senate) to 321 in the House of Representatives in New Hampshire. The pay of members also varies, from one dollar a day in Rhode Island to $1500 for a year in New York. Usually the pay is on a *per diem* basis, from four to eight dollars a day and mileage.

Powers of the Legislature

The legislature is the law-making body for the State. It may create offices and corporations, grant charters, regulate the local government in counties and cities, raise and expend money, and pass all kinds of laws for the people of the State which are not forbidden by the constitution of the State or of the United States.

How Laws are made

A bill, which is the draft of a law, may be introduced by a member into either house.[1] The bill is then referred to the proper committee and if the committee is favorable to its enactment into law the bill is reported back to the house with a recommendation that it be passed. The bill having been printed then comes up for its second reading. It may be rejected or amended, but if the majority is favorable to its passage it will be passed to engrossment; that is, placed in writing on the record. Later the bill is reported to the house for third reading and passage. Usually a bill may be passed by a majority of the *quorum*, which is the number required by the constitution for the transaction of business. But some constitutions provide that a majority of all the members elected to the house shall be required for the passage of a bill. On the final vote the "yeas" and "nays" of the members are recorded, as a means of placing the responsibility on each member for the passage, or defeat, of legislation.

After a bill has passed one house it is received by the other house, where it goes through essentially the same process. The bill may be amended in the second house. If this occurs the bill must go back to the house which first passed it, to enable that house to consider the amendments. If the houses disagree on the form of the bill it cannot become a law, unless, by a "conference committee" (a committee made up of members of both houses), the two houses can reconcile, or compromise their differences and arrange such terms in the bill as both houses will accept.

If the Governor signs a bill, after it has passed both houses, it becomes a law within a fixed time (it may be 60 or 90 days) after the adjournment of the legislature. If the bill "declares an emergency" it becomes a law immediately after the Governor's signature is attached. If the Governor should veto the bill, as the State constitution usually gives him power to

[1] The constitution usually requires that revenue bills shall originate in the lower house.

do, then the bill has to go back to the house in which it originated for reconsideration. By a number of State constitutions a bare majority of both houses may pass the bill over the Governor's veto; by other constitutions a two-thirds majority is required.

The State Executive

The Executive Department of a State consists of the Governor, the Lieutenant Governor, and certain administrative officers, such as the Secretary of State, Auditor of State, Treasurer of State, Attorney General, Superintendent of Public Instruction. There are also a number of Tax Commissioners, and Boards of Control for educational and benevolent institutions, either appointed by the Governor or elected by the legislature, and in some States the Regents, or Trustees of the State universities, are elected by the people.

Administrative Officers

The subordinate State officers, like the Secretary, Auditor, and Treasurer of State (usually) hold their offices independent of the Governor. They are not related to him like a cabinet to the President or as a council of advisers, though the law may provide that the Governor with two or three of these administrative officers may compose the State Finance Board, or other Boards which may exercise very important functions in caring for the financial and general welfare of the State. But the work of these administrative officers is not political; they do not determine the public policy of the State, but carry out certain duties laid down for them by law. The legislature determines the *policy* of the State and the executive officers are, each for himself, responsible to the people. The Governor and Attorney General may bring suit against one of the State officers for malfeasance or misconduct, and thus cause his displacement, or he may be impeached by the process provided for in the State Constitution.

The Governors are now elected by a direct vote of the people. Formerly they were, in some States, elected by the legislature.

Election, Term, Salary, and Removal of the Governor

They hold office from one to four years and receive salaries ranging from $2000 in some States to $10,000 per year in New York. They are removable by impeachment, after trial before the State Senate sitting as a court, or before a court of the Judiciary.

Duties of the Governor

The Governor has numerous duties: (1) To see that the laws of the State are faithfully executed and that peace and order are maintained. If local officers fail in their duty in this respect the Governor may exercise the higher and full powers of the State conferred upon him by law. (2) To convene the legislature when occasion requires and to recommend desirable legislation; (3) to make such appointments as the Constitution and the laws allow; (4) to act as commander-in-chief of the State militia, and in this capacity to repel invasion and suppress riot, rebellion, and insurrection; (5) to grant reprieves and pardons, though the State may have a Board of Pardons to consult with the Governor or to give advice and recommendation on cases that are presented; (6) to issue writs for the election of senators and representatives when vacancies occur; (7) to secure by extradition criminals escaping to other States.

We do not attempt here to name all the duties that may be imposed upon the Governor in the various States. Since he is often a member of a number of administrative State Boards his office is likely to be a hard-working one, subjecting him to constant calls and duties. He is honored as the head of the State, representing its official dignity on public occasion by his presence and address. His patronage (by appointments) may be extensive, though his office for the most part represents prestige rather than power. In times of strikes, riots, or resistance to law, the character of the Governor becomes of vital concern, and his firmness, wisdom, and executive energy, or his lack of these qualities, may be most important in their bearing on the welfare of the State. The Governorship in one of the leading States may prove to be

of party and political importance, as it may put him in line for political promotion to the Senatorship, the Vice Presidency, or the Presidency.

The Governors in all the States but three have the veto power. In some States his veto may be overridden by a bare majority of the legislature, but even in such cases the Governor's veto may be effective, as it may cause delay and public exposure of a bad measure and lead to its defeat upon reconsideration. The Governor's standing with the people oftentimes depends upon his courageous and effective use of his veto.

The Governor's Veto

The Lieutenant Governor corresponds to the Vice President. In most of the States he is *ex officio* the President of the State Senate, and to this his functions are limited. In case of the death or disability or resignation of the Governor the Lieutenant Governor succeeds to the governorship.

Lieutenant Governor

The power to remove a State officer is vested either in the Governor or the Legislature, or it is done by the Governor (without option on his part) upon address by both houses of the legislature.

The Removing Power

The State Judiciary

Each State has a judicial system of its own. There are Supreme Courts, Circuit and County Courts, intermediate appellate courts, Probate Courts, and City Police Courts.

In earlier days the State judges were generally appointed by the Executive, as the United States judges are now, or they may have been chosen by the legislature. Popular election became more frequent under the constitutions of the new States that came into the Union in the era and under the influence of Jeffersonian democracy, 1801–1850. The judges are now elected by the people in a majority of the States (31 out of 48). With the growth of the democratic spirit the terms of the judges also became shorter. Formerly the tenure was usually for life or good behavior, as now in the United

An Elective Judiciary

States Courts. Judges could be removed only after being convicted upon impeachment or, in some States, upon an address requesting their removal presented by both houses of the legislature, a two-thirds vote being required. This made the judges secure in their offices so long as they conducted themselves in a manner becoming a judge. Now in many States frequent elections occur, and new and untried judges are constantly coming to the bench, unless the judge's office is treated (as it should be) by the party and nominating forces as entirely a nonpartisan and nonpolitical office. The terms of the judges vary from two years in Vermont to twenty-one years in Pennsylvania, averaging about eight years in all the States. The salaries vary from $2000 per year in Oregon to $17,500 per year in New York.

Effect of Popular Elections, Short Terms, and Low Salaries

It is contended by many that popular election, short terms, and low salaries have had a very bad effect in lowering the character of the State judiciary; that the choice of judges is really thrown into the hands of political wire-pullers and that judicial places are used by unscrupulous politicians for party purposes to reward party workers; that short terms compel the judges to keep on good terms with the political manipulators and they cannot therefore administer the law without fear or favor; that small salaries prevent leading lawyers from accepting the judicial office, as they can make much more money in their practice. As the result of all these influences it is asserted that the judges in many States are much inferior to the lawyers who practice before them and much inferior to the judges of earlier times.

On the other hand it may be said that the most astute and money making lawyers may not make the best judges; that it is only distance that "lends enchantment" to the judges of a past age, and that present-day judges are just as good, and that our State courts have been very creditable bodies; that while political influences may affect the conduct of some of our county and circuit courts, yet wherein

this is so it does not gain favor for the judge among the people; and that popular election may have its advantages in restraining a judge who might be inclined to be too autocratic or to be much governed by class interest. And since State judges also have power to declare legislative acts unconstitutional they may be governed in their decisions by some class or political bias, and by "judge-made law" they may attempt to control or interfere with the public policy of the State.

State judges are sworn to support both the constitution of the State and of the United States, and they may declare unconstitutional not only an act of the State legislature but also an act of Congress. In the latter case the decision would not, of course, be final, but might be reviewed and reversed by a national court. It is the special function of the State court to expound the State constitution and explain and apply the State law in cases that may arise. As in the United States courts, the State judges decide on constitutional questions only as cases arise in suits at law. This may cause delay in determining whether a statute is really valid and will continue to stand. Some States in order to meet this difficulty require the Supreme Court of the State to deliver an opinion on the constitutionality of an act immediately upon its passage or as a condition of its passage. Such opinions, however, cannot have the same weight or binding effect as a final official decision following litigation, and a judge may not feel bound in his final decision on a case by his previously expressed opinions. Upon hearing a case at law the judge may be influenced by what appears in the practical working of the act and by able arguments of attorneys in the case.

State Courts and the Constitution

Administration of Justice and the Punishment of Crime

It is, as we have seen, the State and Local Governments which have, in the far larger number of cases, the task of repressing crime and administering justice. It is in the city police courts or the State circuit courts that most of our

criminals are arraigned and punished (or not punished) and in which our laws are efficiently administered or are allowed to be loosely and corruptly applied. The Federal Government has jurisdiction over very few cases.

Arrest of Accused

An offender against the law, or an accused person, may be arrested on a warrant issued by the proper magistrate; or he may be arrested by an officer of the law without a warrant if he is caught in a criminal act.

Examination of Accused

The accused is brought before a court for examination. If there is no evidence of his guilt he will be set at liberty. If his guilt seems probable the court will order the accused to be committed to jail to await the action of the grand jury, or to be admitted to bail; that is, the accused will be allowed to have his freedom if some reliable persons become security for his appearance in court for trial or investigation when desired.

Grand Jury

The grand jury, a varying number of men, will inquire into the case in secret session, seeking evidence and examining witnesses; and if this body concludes that the accused is probably guilty he will be formally indicted. The public prosecutor (prosecuting attorney) conducts the investigation before the grand jury and he will draw up the formal charges or "true bill," and later prosecute the case before the trial court. The indictment sets forth the nature of the crime and the charges which it is proposed to prove.

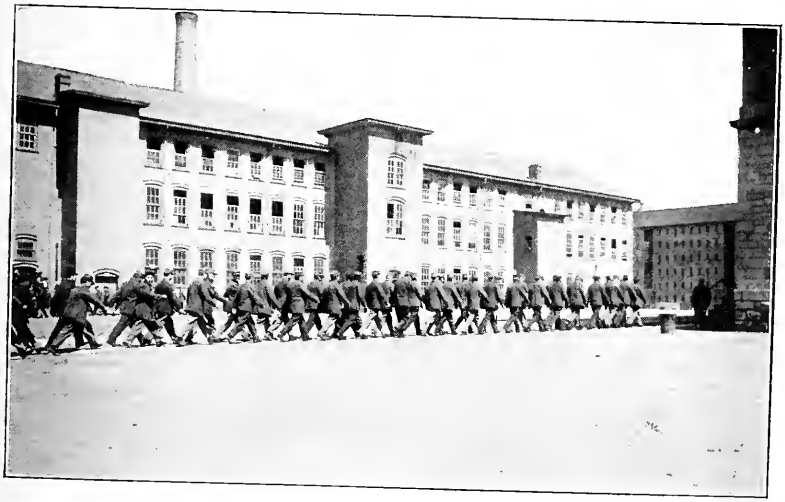
The Trial

The accused is then arraigned in open court and he is asked to say whether he is guilty or not guilty. If he "pleads guilty" (admits his guilt), the court or judge decides upon the penalty. If he pleads "not guilty," the trial proceeds unless the attorney for the accused by successfully objecting to the jurisdiction of the court, or by some "plea in abatement," secures a dismissal of the case. The trial consists of the legal investigation of the evidence.

Constitutional Rights of Accused

A man accused of crime has certain constitutional rights: (1) A speedy and impartial trial before an impartial jury. (2) Compulsory process to obtain witnesses in his favor.

A Court Room for the Trial of Cases



Prisoners Exercising in a Prison Yard

AN ACT

Authorizing cities of the third class to appropriate money annually for music in public parks and in other public places

Section 1 *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same* That from and after the passage of this act it shall be lawful for any city of the third class to appropriate public moneys for the purpose of having music in any public park or place At the time of making of the annual appropriation ordinance any city council in a city of the third class may appropriate such sum of money as in their judgment shall be necessary for the purpose of supplying music in any public park or place

.....
President pro tempore of the Senate.

.....
Speaker of the House of Representatives.

Approved—The.....day of.....A. D. 1917.

.....

FACSIMILE OF A STATE LAW

Those who know circumstances in his favor may not be allowed to absent themselves from the trial or to refuse to testify. (3) A copy of the accusation against him. (4) To have counsel (a lawyer) for his defense and to be confronted by the witnesses against him. (5) He may not be twice placed on trial (in jeopardy) for the same offense. (6) He is presumed innocent until proven guilty.

The Petit Jury

The petit jury is the trial jury, — a body of twelve men legally selected to hear the evidence and decide the case. The judge instructs the jury how to decide "according to the law and the evidence." That is, the judge explains the law to the jury and the jury decides on the facts of the case. The members of the jury are sworn to try the case according to the evidence. Before the trial begins both the prosecution and the defense may object for valid reasons to certain talesmen serving on the jury, and each side is also allowed a certain number of "peremptory challenges." That is, they may exclude certain talesmen arbitrarily. Sometimes, in this way, the jury is "fixed" to "hang," that is, to come to no decision, and there is delay, another trial, and added expense.

The trial consists of hearing the witnesses under the examination and cross-examination of attorneys; the arguments of the lawyers; the charge of the judge to the jury; and the jury's deliberation and decision. In criminal cases the verdict of the jury must be unanimous, and this often results in the "hanging" of the jury, when eleven "stubborn men" will not agree with the one who may object to a verdict of guilty. Under the jury system it is made difficult to convict a criminal from the fact that the prosecution must prove "beyond a reasonable doubt" every charge brought in the indictment, and sometimes the indictment is not properly drawn up.

The Verdict

If the jury's verdict is one of acquittal the accused is immediately discharged. If it is one of conviction, the attorney for the accused may make a motion for a new

trial or appeal to a higher court, and sometimes the culprit is released by a technicality in the trial.

Demand for Court and Jury Reform

Because under the jury system guilty murderers are so often set free, and because there is so often a "miscarriage of justice," and the prejudices of jurymen are played upon by skillful attorneys, and sometimes are corruptly influenced, many people have lost respect for the "sacred right of trial by jury." A demand has arisen for court and jury reform, to prevent abuses and delays, if need be by modifying the form and method of the trial and verdict. Many States in civil cases (involving property and money) allow a verdict by less than the whole jury. In criminal cases where life and liberty are involved, the theory (and seemingly the practice) of our legal procedure is that it is thought better that ninety-nine guilty persons should escape than that one innocent person should be convicted. What is needed is quick, decisive, and just action by the courts, not that punishment should be more severe or extreme (and never cruel), but that it should be speedy and certain and administered with a view to reforming the offender and fitting him for better citizenship.[1]

Defects and Failures of State Governments

Proposed Constitutional Changes in State Government

Some fundamental changes in State Government have frequently been discussed.[2] The Governor of Arizona recommended a small unicameral legislature of from five to fifteen members, since the State is working under the initiative and referendum (see p. 36). The Governor of Washington pro-

[1] The study of criminology is beyond the scope of this book, but the student who may be interested in the subject of the prevention of crime and the treatment of criminals may profitably consult, in addition to text-books in Sociology, Havelock Ellis's *The Criminal*, A. C. Hall's *Crime in its Relation to Social Progress*, and C. R. Henderson's *The Dependent, Defective* and *Criminal Classes*.

[2] Notice the Proceedings and Results of the New York Constitutional Convention of 1915.

posed a single chamber of twenty-five members. The Governor of Kansas suggested a small legislature of *one* house for a term of four or six years with the Governor as a member. Such proposals have come, no doubt, from observation of the successful experiment of cities with the commission plan of city government.

These and other proposals suggest vital changes that go to the very root of the whole system of State governments and they come from a feeling that these governments have failed to satisfy the needs of the States. It is apparent that in many ways our State governments are inefficient and extravagant. The official life of the State is without leadership, without unity, without clear and direct responsibility to the people. The State governments arose at a time when men were suspicious of government and their officers. Our fathers wished to restrain their governing agencies and bind them down with constitutional restrictions. They wanted a government that was powerless to do harm, — the best was the one that did the least (see p. 76). The Constitution was for the purpose of tying the hands of a bad Legislature or a bad Governor rather than to make it essential to the people to elect good ones.

Early Fear of too much Official Power

It was for this reason that our fathers sought to divide their government into three parts ("separation of the powers," see p. 199), each to prevent the other from going astray, — the Governor to veto the legislature, the legislature to check the Governor, the courts to protect the people from executive and legislative abuses, with the constitution over all to require certain methods of behavior and to safeguard the people against any form of official misconduct. This distrust of government was erected into a system, — the system of "checks and balances" which is based, as Mr. Bryce has said, on the "doctrine of original sin in politics," — that no one can be safely intrusted with any substantial authority. It represented the Jeffersonian faith that "free government is

Obstructions to Efficiency in State Governments

founded in jealousy, while confidence is everywhere the parent of despotism." [1]

What Jefferson had in mind here was the vital idea that "eternal vigilance is the price of liberty" and that the people should not go to sleep in serene confidence that their elected rulers will be sure to manage their government well. He wished the officers of government to be frequently responsible to the people, and he was reluctant to intrust to them much real power.

Lack of Unity, Leadership and Constructive Power

The result has been a weakness, almost a breakdown, in our State governments on the *positive* side. The lack of unity, responsibility, and recognized leadership has prevented constructive work from being done, and the system of "checks and balances," originally designed for democratic reasons, has really prevented a real democratic popular control of the State government. The State service is costly, the work is poorly done, there is lack of coöperation between officers, there is failure to get before the legislature the facts essential to appropriations and legislation, — and through all a lack of unity and responsibility. The legislature has control over the State finances and over the creation and powers of many offices. The Governor lacks control over executive and administrative action. Many State officers are elected who are not at all accountable to the Governor and who exercise within their respective spheres very important executive powers. There is a large increase of State activities, with many commissions, boards, and new departments with many administrative powers, but without any central or head control lodged in a chief administrator, like the Governor.

No big business firm is ever managed so. In such a firm there is always a chief or head or foreman with power to oversee and direct. Responsible leadership and effective collective action are just as essential in a State's government. Somebody must direct and lead and say what shall be done. But our

[1] Jefferson in the Kentucky Resolutions, 1798.

ordinary State constitution, with its system of divided powers and responsibilities, tends to prevent this. Consequently there has grown up an outside non-official irresponsible partisan organization, — the party machine, with the Boss at its head, — with a dominating influence in determining the conduct of the legislature. This has led to "log-rolling" legislation and "pork barrel" politics. The legislators vote to satisfy their constituencies in small geographical areas or "to make themselves solid" in their own localities by furthering schemes of mere local interest and development, or to carry out party obligations (assumed by the party leader) to certain moneyed interests. The tax system, the school system, road building, the suffrage laws, home rule for cities, the labor laws, social betterment, control of public utilities in the interest of all the people, — all these and other larger questions of State often are allowed to "go by the board" while local log-rolling interests or party interests are carefully safeguarded.

The real leadership is in the Boss who is in control of the legislature, and who from his hotel room issues instructions as to what the "organization" wants done. The legislators who want offices and party nominations and who are at the head of important committees in the legislature, line up to vote as the Boss instructs, or as the party *caucus* decides, and there the influence of the Boss is likely to be all-prevailing. So the Governor representing the people is not the leader, but the Boss representing the party organization, who may have "made" the Governor by permitting his nomination by the party, is the real leader. This Boss is sometimes corrupt and, working in the dark, gives us the "invisible government" that really controls the legislation and policy of the State.

Boss Leadership and "Invisible Government"

Proposed Reforms of State Government

What is the remedy? It is proposed to make constitutional provision for official leadership and to locate this leadership in the Governor of the State. There can be no intelligent

government without leadership. The party is an efficient organization, unified and under leadership, with its central and local committees and workers all coöperating to control the State and its policies. The Boss represents this organization and he will be the State leader until the people provide for themselves a better one. The people have not voted to put this Boss in power, but he wields a power which the people cannot take away except by turning his party out of power, and then the people would still be governed by a Boss, with only a change of party name.

Need of Executive Leadership

A Ministerial, Responsible Cabinet Government proposed for the State

Instead of this Boss control and leadership it is proposed to make the Governor both the leader of the party and the constitutional official leader of the State, to direct the State's policy so long as the people will sustain him. To do this, it has been proposed to make a fundamental constitutional readjustment between the legislature and the Governor, on the one hand, and the Governor and the administrative officers on the other. It is proposed to introduce a modified form of parliamentary government. The constitutional change, as proposed, would allow the people to elect by the *Short Ballot* (see p. 45) the responsible head of the State, the Governor, and the Lieutenant Governor. The other administrative officers (Secretary of State, Auditor of State, Treasurer of State, Attorney General, etc.) would become a Cabinet to the Governor, appointed by him and subject to his removal. The Governor and his advisers, the Cabinet, are to be empowered to originate policies and bills, to present them to the legislature, and to defend them there. The making of the *Budget* — determining how much money shall be raised and how it shall be raised — is to be transferred from the legislature and its committees to the Governor and his Cabinet. This would tend to make the Governor an official State political leader, who, as leader of the majority party, would become responsible for the policy and efficiency of the State government. The Governor and his advisers would decide and act

for the people of the whole State, responsive to and under the guidance of public opinion. It is believed that this would introduce order, efficiency, and integrity and destroy the corrupt unofficial despotism of the Boss.

Direct Popular Control through Executive Leadership

It is claimed that this would bring the voters into direct control of their State government. It would increase the value of their State government in their estimation and add to their interest in their own government. Their attention would be invited and concentrated, and their understanding and public spirit appealed to. Voting would be conducted for public interests, not for personal or private interests. "The system which will be framed to accomplish positive policies will cultivate in the voter positive political convictions. It will encourage the development of leaders capable of formulating and realizing these popular convictions. It will concentrate public opinion at elections on the work of the Government already done or on the work proposed for the future, and the State government will become a government of the people, reflecting their preferences and convictions." [1]

TOPICS AND QUERIES

1. Debate: "Resolved that the Canadian Federal system is better than the American."
2. "The Union is older than any of the States, and, in fact, it created them as States" — Lincoln's Message, July 4, 1861. Prove that this is true to history, or untrue.
3. In what respect is the power residing in a State legislature like that of the Parliament of England? In what respect different?
4. Are the "rights of the States" more or less than they were in 1789? Why?
5. Why have State governments been growing weaker and the national government stronger? What have economic and social changes had to do with this?
6. How is "invisible government" to be checked in State legislatures?

[1] *The New Republic*, August 14, 1915. See also Professor C. A. Beard on Reconstructing State Government, in *The New Republic* of August 21, 1915, and Bulletin 61 of the *Bureau of Municipal Research*, and Herbert Croly's *Promise of American Life*.

7. Why would it not have been better for the South to have won in the Civil War, so as to have preserved more local self-government against the growth of national powers?

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CHAPTER VII

THE GOVERNMENT OF TERRITORIES AND DEPENDENCIES

THE government of our Territories and Dependencies is under the control of Congress. The Constitution gives to that body "power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." The Constitution did not expressly give the power to acquire territory, but that power has *resulted* from the inherent nature of the Constitution and of the national government created by it.

All of the contiguous continental Territories have now been admitted as States. In the beginning of the Union the old Continental Congress, as a means of inducing the States to cede to the United States the lands which they claimed in the West, passed a notable resolution (Oct. 1780), promising not to hold the lands as subject Territories but to erect them "into equal republican States to be admitted to the Union with all the rights and privileges" that the other States enjoyed. According to this the custom has been for Congress to erect out of newly acquired territory separately organized Territories, to provide civil government for them (by an Organizing Act), giving each Territory a large measure of self-government, and when it has acquired a population equal to the number entitled to elect a member of Congress, to admit the Territory to statehood.[1]

Early Organizing Acts for Territories.

[1] When the Ordinance of 1787 was passed (which was the first territorial organizing act of Congress) to provide a civil government for the Old Northwest, it was provided that one of its Territories might

This guarantee of self-governing statehood was given in the case of all acquisitions of territory until 1898, when by the Spanish-American war the Insular Possessions were obtained. That treaty of acquisition permitted that these islands might be governed by Congress as *Dependencies.* The privileges and guarantees of the Constitution were not extended to these islands either by the treaty or by the Constitution's own power (*ex proprio vigore*), but a resolution of Congress might extend these privileges at any time.

Colonialism or Imperialism.

Until this is done the people of these islands are not *citizens* but *subjects* of the United States, and the islands are under the absolute power of Congress without restraint by the limitations of power imposed by the Constitution. It was decided by the Supreme Court in what is known as the "insular cases" that these islands were not a part of the United States but were *possessions* of the United States, and because of this it was charged that America had started toward *imperialism;* that from being made up of self-governing colonies and States we had now come to hold foreign peoples in *subjection.*[1]

How a Territory Became a State

When a continental Territory was ready for statehood its Legislature petitioned Congress by a "memorial" to pass an "enabling act." This act enabled, or authorized, the people of the Territory to elect a constitutional convention for the

be admitted to the Union when it had attained a population of 60,000. This required number increased from decade to decade as successive apportionment acts required a larger population for each congressman. (See p. 272.) Nevada was admitted in 1864, before it had a sufficient population, in order to secure enough States to ratify the Thirteenth Amendment; and some Territories have been kept out for party reasons after having more than the required number.

[1] The people of Porto Rico have been made citizens by act of Congress. See p. 5. The inhabitants of the recently acquired Danish Islands became citizens of the United States by the treaty of acquisition (1917), except in the case of those who might choose within a year to retain their Danish citizenship. Very few chose to remain subjects of Denmark.

purpose of framing a State Constitution. When this had been drawn up and ratified by the people of the Territory (a privilege usually allowed to the voters) it was presented for the approval of Congress. If Congress approved, a resolution was passed accepting the new State, and if the President did not interpose his veto but signed the admitting act, the Secretary of State would be authorized to declare the formal act of admission.[1]

Alaska

Congress has provided a government for Alaska and the Island Dependencies. Since 1912 Alaska has had a Governor, appointed by the President, and a representative legislature, though its legislative powers are quite limited and much of the government is administered directly from Washington. The War Department controls the telegraph lines and the means of communication, while the schools for the natives are administered by the Bureau of Education. Territorial self-government is yet to be allowed to Alaska.

[1] To its original territory the United States has made additions as follows:

Territory "acquired"	Year	Country from which acquired	Method of acquisition
Louisiana	1803	France	Purchase
Florida	1819	Spain	Purchase
Texas	1845		Annexation
Oregon	1846		Boundary fixed by treaty
First Mexican Cession	1848	Mexico	Conquest and treaty
Gadsden Purchase	1853	Mexico	Purchase
Alaska	1867	Russia	Purchase
Hawaii	1898		Annexation
Philippines, Guam, and Porto Rico	1899	Spain	Conquest and treaty
Tutuila Island	1899		Treaty arrangement
Danish West Indies	1917	Denmark	Purchase

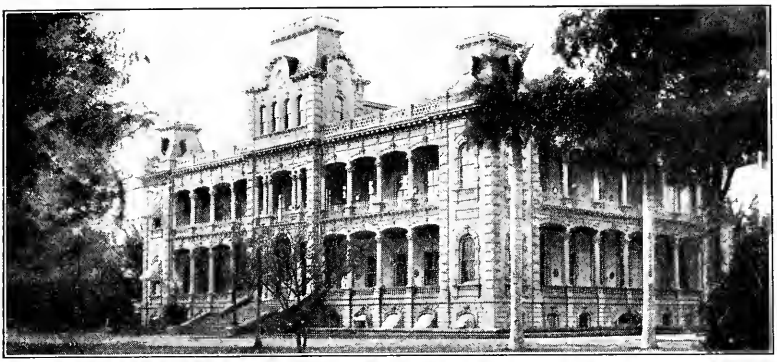
Hawaii

In Hawaii, annexed in 1898, the legislature is composed of two houses, the "Senate" and the "House." The Senate is composed of fifteen members elected for a term of four years. The islands are divided into four districts, each district electing from two to four Senators according to population. The House of Representatives has thirty-six members, elected every two years from six districts, the districts choosing from four to six members. The voting privilege is conferred only upon male citizens of the United States who are twenty-one years of age, who have resided in the territory one year and in the district three months. The voter must be registered and be able to read or write either the English or the Hawaiian language. This eliminates the large numbers of Chinese and Japanese in the islands.

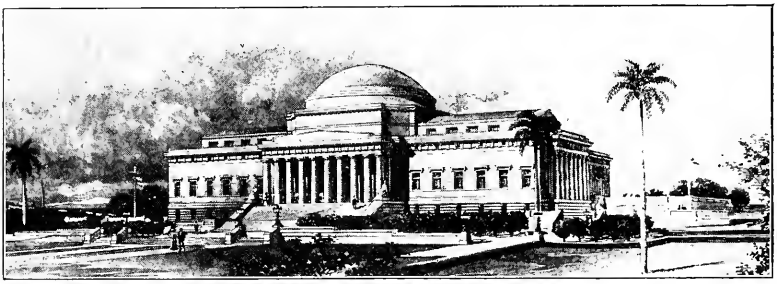
Porto Rico

By an act of 1900 Congress provided for the government of Porto Rico. This provided for a Governor for a term of four years, to be appointed by the President, by and with the advice and consent of the Senate. The President was authorized to appoint six other officers: a Secretary, Attorney General, Treasurer, Auditor, Commissioner of the Interior, and Commissioner of Education. Each of these presides over a Department. They with five other persons appointed by the President and confirmed by the Senate, constitute the upper house of the Porto Rican legislature, which is known as the Executive Council. Five members of this Council must be native Porto Ricans; so far the other six have been Americans. The lower house of the legislature, known as the house of delegates, consists of thirty-five members, elected by districts every two years.

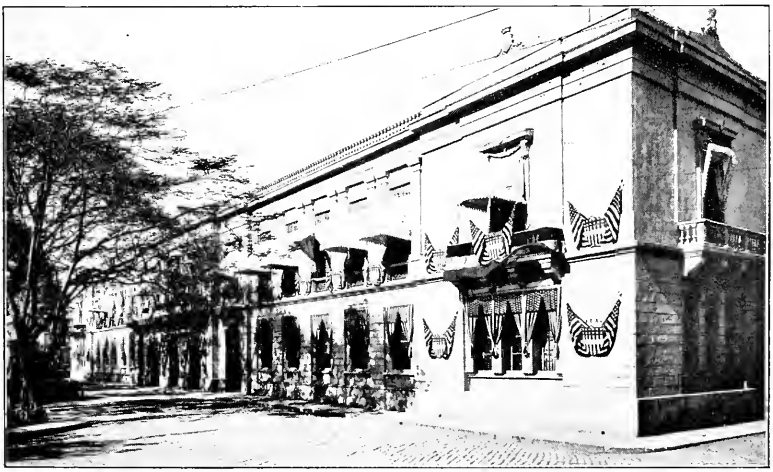
This Porto Rican legislature is given the power to determine the qualifications for the franchise. It has decided (1904) that all male persons twenty-one years of age may vote if they have resided in the island one year and in the district six months, and that no person could acquire the right to vote after July 1, 1906, unless he could read or write either English



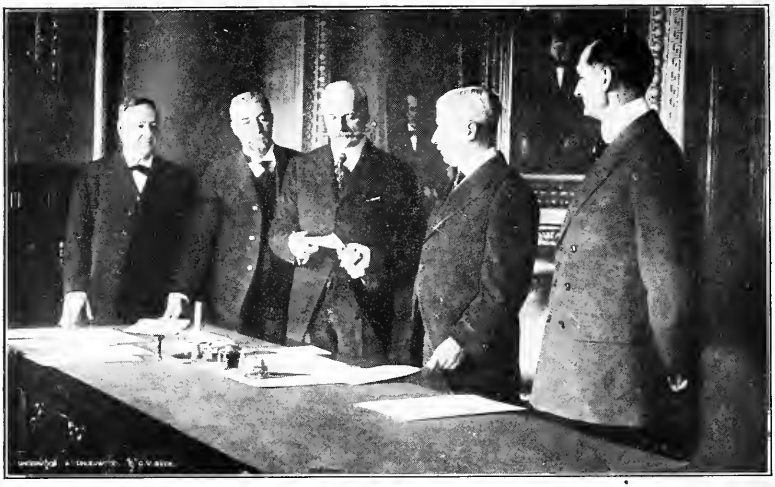
Executive Building, Honolulu, Hawaii



Federal Building, San Juan, Porto Rico



Government Building, Manila, P. I.



PAYING $25,000,000 FOR THE DANISH WEST INDIES, MARCH, 1917
The transaction occurred in the famous Diplomatic Room in the State Department.

Received from the Secretary of the Treasury of the United States of America the sum of $25,000,000 gold, in warrant on the Treasury of the United States, numbered 13,223, and dated March 31, 1917, the same being in full payment of the obligation of the Government of the United States to the Government of Denmark as set forth in Article V of the Convention between the United States and Denmark for the cession of the Danish West Indian Islands to the United States, signed at the City of New York on August 4, 1916, the ratifications of which were exchanged at Washington on January 17, 1917; the payment being provided by an Act of Congress approved March 3, 1917, entitled "An Act to provide a temporary government for the West Indian Islands acquired by the United States from Denmark by the convention entered into between said countries on the fourth day of August, nineteen hundred and sixteen, and ratified by the Senate of the United States on the seventh day of September, nineteen hundred and sixteen, and for other purposes."

Washington, D.C.,
March 31, 1917.

RECEIPT FOR THE $25,000,000 PAID FOR THE DANISH WEST INDIES

or Spanish. There have been some conflicts between the House of Delegates and the Executive Council over the financial budget, but these have been adjusted and now American citizenship has been conferred by Congress upon the Porto Ricans (1917).

The Philippines

These Islands, acquired by the war with Spain in 1898, had a military government until 1901. The executive authority in the islands was turned over on July 4, 1901, to Mr. W. H. Taft, the President of the Philippine Commission, which had been created by Congress. In October, 1907, the first representative assembly for the Philippines met. At the head of the Philippine government is a Governor appointed by the President. There are four Executive Departments, with a Secretary presiding over each: Interior, Commerce and Police, Finance and Justice, and Public Instruction. These Secretaries, with the Governor and four others appointed, constitute the Philippine Commission, which is also the upper house of the legislature. The lower house consists of eighty members elected from the civilized portions of the Islands. A voter must be twenty-three years of age, a tax-paying property owner, or able to read, write, or speak English. Under President Wilson's administration a majority of the Commission have become Filipinos. There has been some agitation for independence, — "the Philippines for the Filipinos," and there are opportunities for quarrels between the American Governor and the legislature, but the leading Filipinos see the importance, if not the necessity, of retaining American government until the Filipinos become better prepared for self-government. Then they may not desire independence, but may be given statehood instead. The Islands have a judiciary, consisting of lower courts and a supreme court, the latter consisting of seven members, Americans and Filipinos appointed by the President.

American government in the Philippines has brought about a prosperity and advancement such as the Islands had

never known before. Public works and good roads have been built, modern methods of hygiene and sanitation have been applied, and the industry and commerce of the Islands have been promoted. The good school system organized and directed by a large number of American teachers who went to the Philippines after the United States came into possession, has given the young Filipinos an opportunity to prepare themselves for leadership, and they have been quick to show their natural enterprise and intellectual capacity.[1]

The District of Columbia

The District of Columbia, containing the city of Washington, the seat of government for the United States, is a tract of seventy square miles. It is entirely under the control of Congress. That body has provided for the government of Washington City by a Commission of three members, and the city affords a good illustration or model of Commission government for cities, except that Washington is not at all self-governed.

[1] In addition to the possessions that have been named, the United States owns Guam in the far Pacific, obtained from Spain in 1898, which is governed as a naval station by a naval officer; and the Canal Zone, a strip in Panama ten miles wide, controlled by a Governor appointed by the President. The three Danish Islands in the West Indies were acquired by purchase ($25,009,000) in 1917.

CHAPTER VIII

FORMS AND FUNCTIONS OF GOVERNMENT

"For forms of government let fools contest;
Whate'er is best administered is best." — POPE.

FORMS of government are not of first importance. They are but the means to the end. It is the governing men and women that count. Men believe in a democratic form of government because they believe it to be the best form or means to attain the end in view, — a just government. They may believe that such a form of government will secure the greatest good to the greatest number; not because they believe that democracy will always result in the most efficient or most orderly government but because they believe that men should learn to govern themselves and that in the long run self-government will result in the better civic development of all men.

Forms of Government are but a Means to the End

But it is obvious that in some countries, under certain conditions, a democratic form of government might not be workable or desirable. It all depends on the habits, conditions, and capacity of the people to be governed. So the science of government has been well called the "science of circumstances." Forms, methods, institutions, constitutions, all these are *formal* not vital things in government. They have come and gone according to men's circumstances and experience in history. Experience is the great teacher, and government is an experimental science. Experiment has been the means of learning whether this form or that, one institution or another, is the best adapted to obtain good government or whether it is best calculated to promote the education of men for self-government.

Self-government is the Goal in Civil Society

Knowledge and Progress: The Natural and the Social Sciences

We have always heard that "knowledge is power." Knowledge is the basis of all progress in science and life, not only in the physical sciences but in the social sciences also, among which is the science of government. Physics, astronomy, botany, agriculture, are some of the *natural* or physical sciences. In these men learn by practice or by experiments in the laboratory. History, political economy, political science, sociology, — i.e. the study of society, — are some of the *social* sciences. In these fields, also, experience brings knowledge and knowledge brings progress. We ought, therefore, to try to know the business of government and how this business is conducted, to learn the failures that have occurred, the successes achieved, the best means that can be employed, and the reforms that are needed to enable the people to obtain better government.

Functions of Government

Scope and Functions of Government

The scope of government has become more extensive in recent years, as the study of this subject will show. There are those who think that government should still further enlarge its functions, while others feel that it should more strictly confine itself to the old functions of merely preventing crime and protecting life and property. All recognize that government should do certain essential things:

(1) It should maintain order and protect the life, liberty, and property of the people.

(2) To this end it should prevent crime by restraining and punishing criminals.

(3) It should erect courts to administer justice between man and man. If men will not keep their contracts or pay their debts or taxes voluntarily it may be necessary for government to use coercion and restraint.

(4) Many domestic relations are subject to governmental control, as the relation between husband and wife, parents and child, guardian and ward, employer and workman.

(5) Government determines the political rights and duties of men and women by regulating such matters as suffrage, elections, and eligibility to office, and the duties of officers.

(6) The control of a nation's foreign relations in matters relating to treaties, peace and war, and defense against attack.

(7) The provision of the necessary agencies of commercial intercourse, by coining money and providing a legal tender for the payment of debts; by determining upon reliable weights and measures; by keeping open highways for travel and transportation; by providing postal facilities and means of communication.

All these essential functions of government will suggest other activities which government may choose to undertake if its controlling powers desire, such as the regulation of trade and industry; the fostering of public improvements, roads, bridges, canals, harbors; promoting education in elementary and secondary schools and in colleges and universities; safeguarding the public health by maintaining sewer systems and water systems and systems of inspection for buildings and mines and factories. All these things are done, some more and some less, some better and some worse, under all forms of government.

Definition of Terms in Government

We ought, also, to know the forms, processes, and institutions by which men have sought to govern themselves and others. Certain forms of government are so frequently referred to that it becomes necessary to have them defined.

Forms of Government

There are three familiar forms of government: 1. Monarchy. 2. Aristocracy. 3. Democracy.[1]

Monarchy

A *monarchy* is a government by a single person. If the monarch's power is limited by law or by a constitution, it is called a limited, or constitutional, monarchy, like that of Great

[1] This classification goes back to Aristotle. *Politics*, Book III.

Britain; if it is not so limited, it is called an unlimited, or absolute, monarchy. This is a despotism such as Russia had. There may be such a thing as a "benevolent despotism" — the wise, good rule of an absolute monarch. But if such a monarch recognizes no law or constitution in restraint of his power, he is a despot. If he governs wickedly and oppressively he is a tyrant; if he governs wisely and well, he is a "benevolent despot," but a despot just the same. The word *despot* generally has a bad significance, because, as a rule, an unrestrained despot governs badly.

Aristocracy

Aristocracy is a government by the few; literally speaking, by the superior or best citizens of the state.[1] If we were to look only to the *quality of the government* and not to *the character and development of the people to be governed*, and if we could make sure of finding some fair, safe way of choosing the most competent persons to govern; and if we were certain that they would govern in the interest of all and not chiefly in the interest of a class, there would not be much objection to an aristocracy. It should be borne in mind that the *motive* of those who govern is an important factor in any government. If the motive or desire of those in power is to promote the welfare of the people and not merely to look out for their own interests, good government is more likely to follow. In America we are inclined to think government by *all the people* and not by any *class* will be more likely to bring "the greatest good to the greatest number."

Democracy

A *democracy* is the form of government by which the power of the State is exercised by the majority of the people, or by the masses.

"Since the development of modern democracy the *form* of government is often radically different from its spirit. Great Britain by *theory* is an absolute monarchy but is in fact a representative democracy, and Mexico, which is by theory a democracy, is in fact a close aristocracy. This divergence

[1] *Aristoi* is the Greek word for *the best.*

between theory and fact . . . makes it difficult to devise a satisfactory classification." [1]

Kinds of Democracy

Degrees of Democracy

A *pure* or *absolute democracy* is a government by the direct action of the people, i.e., one in which the people meet together to make laws and appoint agents to enforce them. A pure Democracy is not possible except over a very small area, or in small city-states, like those of ancient Greece, where all the freemen, or citizens, met together to make the laws or to determine on war and peace and public policies.

About nine tenths of the people in these Greek cities were slaves, who did not have the privilege of taking any part in affairs of government. So these city-states were not very democratic in our modern sense. Aristotle thought of the rule of the people as *mobocracy*, i.e., the rule of the mob. He supposed the masses who were ignorant and depraved in his day could only produce government of the lawless mob, moved by passion, excitement, and violence. He wished a government by established law in the interest of the common good. He used the term *polity* for our idea of orderly democracy.

Direct legislation by the people, or the enactment of laws by the initiative and referendum, is an approach toward pure democracy, since it reduces the power and importance of the representatives of the people and gives more power to the people themselves. (See p. 36.)

The Republic

A *representative democracy* or a *republic* is the form of government under which the people rule through their representatives. A republic may be more or less democratic. Some so-called republics of the past have been *aristocratic* republics, like those of ancient Greece, where an educated leisure class exercised power. Some have been *military* republics, where the power of the State was organized on a

[1] Dealey, *The Development of the State*, p. 120.

military plan for quick united action for conquest or defense. Some have been *oligarchic* republics, like Venice, where a handful of nobles exercised power.

The Oligarchy

An *oligarchy* is a government by the few. It may be by a military class, or by a landed, hereditary aristocracy, or by a plutocracy, which is a government by the *rich*. A plutocracy is a vicious and corrupting kind of government. It is likely to exist under some other name, but under it a few men of wealth corrupt the voters, buy the laws, control the administrators and judges, and force the people into subjection.

Militarism

Militarism is a system under which government is controlled by a military class. Prominence is given to military training and military distinctions, and the military classes arrogate to themselves the powers, honors, and rewards of the State. Militarism cultivates pride of rank and leads the military to stand by the interest of their class at the expense of common justice and the public welfare. It leads to the assertion of arbitrary and domineering power over the masses, and entirely subordinates the civil interests of man to the military interest.

Militarism involves large standing armies, heavy military expenses, and burdensome taxes upon the people. It exalts authority and disregards liberty. The soldier despises the citizen, and the rulers in a military State generally demand of their subjects flattering obeisance, subserviency, and servility.

The military state may be good for preserving order, for training men for obedience and united action, and for providing efficient and orderly administration. But to a democratic people militarism is especially distasteful. It is absolute, arbitrary, and autocratic. It violates all equality of rights, since a great social gulf is fixed between the private soldier, or citizen, and the army officer. All honors go to the military, — uniforms and shoulder straps, swords and sabers, being their trappings and symbols. In times of war and great public danger a free people may have to submit to the suppression

of civil law and civil liberty by the military arm for the sake of the public defense, according to the maxim, "The safety of the public is the highest law;" but they do this only from dire necessity. Military rule over a free people in time of peace is always objectionable.

Military Training in a Democracy

A nation may be well prepared for defense by having good soldiers without being governed by a military spirit or a military class. Switzerland is a good example of a democratic country where all the young men receive military training, and, in consequence, the army of Switzerland is very effective for so small a country. It is a democratic army in which every officer has first served as a private. All have been withdrawn from their usual occupations for a series of years and drilled in camp and march and trenches and other military practices. In a democracy every able-bodied citizen should be ready to be a soldier. The young men might be trained for social service as well as for military service, like the Boy Scouts. A good system of training for a citizen soldiery need do nothing to promote the military class or to decrease our loyalty to democratic government. Such training might rest on a sense of universal service to the country.

Modern governments do not now, as a rule, raise armies for war by a system of volunteering but by a system of selection. All able-bodied citizens, in time of war, are liable to be "called to the colors" for the defense of their country. Exemptions are allowed for good reasons, some being left in the factories and on the farms while others are called to bear arms. When the nation is organized for war, all patriotic citizens are ready to serve where their country needs them.

Essential Features of a Republic

The essential element in a modern republic is that its powers should be derived, either directly or indirectly, from the great body of the people, and not from a small proportion or favored class of people. It is not essential to a republic that all its officers should be elective or hold office for short terms. Their

terms may be for a limited period or during good behavior, as the law may determine. The republican form of government, where it exists, is generally guaranteed by a constitution as in the United States, though it may really exist under monarchical forms, as in England. In the latter case the government is essentially republican, though nominally monarchical.

A republic may be *centralized*, or *consolidated*, or it may be *decentralized*, or *federal*.

A Centralized *vs.* a Decentralized Republic: France and the United States

A centralized or consolidated republic is a single nation, republican in form. It may be made up of smaller communities but these are mere subdivisions of the nation. In the centralized republic, like France, all the people are considered in one mass to be governed in all their concerns from a common center. In France there are eighty-six departments for local government. The head, or Prefect, of each department is appointed and removed by the President of the republic, or the Minister of the Interior. Thus, the Prefect is the agent of the general government, and he directs the administration of local affairs. He appoints subordinate officers, supervises the enforcement of the law, maintains control over all administrative officials. Each department has a council, but the council has little power except to see to highways, canals, schools, etc. The council cannot control the Prefect, but that officer may at times annul the acts of the council; and the President of France may dissolve the council or veto its acts. Thus, we see, the departments have no independent governmental powers. They are quite unlike our States in this respect.

Thus, as we see in France, when the local divisions and the powers which they exercise are subject to change at any time by the central government, and when all real power is vested in the central government to be used or delegated as it will, then we have a *centralized* government.

The American republic, as it was originally made and as

it has for the most part remained, is not centralized or consolidated in this way; but it was made up of political communities, called States, which were republics, each within itself, and which had complete working governments before the United States came into existence. The Union did not make the States for its convenience, but the States made the Union for their benefit and common defense. They did this by *federating* and we shall now turn to the study of the American Union or Federal Republic formed by this uniting of the States.

The Federal Union

TOPICS AND QUERIES

1. What are the weaknesses in a democracy? Why is a monarchy, or a military government, more efficient in administration?
2. Why is a local government whose officers are elective more lax and neglectful in law enforcement than the national government whose judges and prosecuting attorneys are appointive? How can this be remedied?
3. What are the advantages and disadvantages of centralized government over local decentralized government? How did the United States come to have the latter kind?
   Read Bryce, *American Commonwealth*, Vol. II, Chapter on "Merits of the Federal System," pp. 350–358.
4. Make a list of the advantages of military training and the evils of military control. Explain the historic opposition in America to large standing armies.

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CHAPTER IX

THE CONSTITUTION: WRITTEN AND UNWRITTEN

The Constitution of a Country is Written or Unwritten

The constitution of a state or nation is its fundamental organic law which determines its form of government and the underlying rules and principles according to which its government shall be conducted. An *organic* law is one which lays down the organs of government and sets forth their functions. It may be *written* or *unwritten*. If the principles, rules, and laws determining the organic form of the state are embodied in a single written document, the government is one of a *written constitution*. But if the rules and principles for the guidance of a government are made up of statutes, decisions, and precedents that have been passed and rendered from time to time, and if the fundamental law for the guidance of the state is found in the usages and customs based on these precedents, practices, and laws of the past, the nation is then said to have an unwritten constitution.

Differences between Written and Unwritten Constitutions

The United States has a written Constitution, — a document of definite length, which, if printed in a pamphlet, may be read through in twenty minutes. The Declaration of Independence is not a part of the United States Constitution, though it contains principles which may influence or control the people in the conduct of their government. Great Britain has an unwritten constitution, — a set of customs, usages, understandings, proceedings and long-standing laws that it has been customary to go by. An important distinction is

that in a country with an unwritten constitution, the constitution can be changed by the ordinary legislature, while in a country with a written constitution the constitution is placed above and out of the reach of the legislature, being subject to change only by the authority (higher than the legislature) which created the constitution. This higher power is generally the people acting through a convention and by a popular vote.

An *unwritten* constitution is called *flexible*, — it may be bent, turned, expanded, or changed more easily, at the will of the supreme legislature.

A *written* constitution is called *inflexible*, or *rigid*. It cannot be so easily turned or changed. It resists bending at the efforts of a temporary majority in the legislature, and its provisions cannot be overridden or disregarded. Its terms are fixed and it can be changed only by the same slow and difficult process by which the constitution was made or according to its own provision for amendments.

It should be understood that a nation with an unwritten constitution is just as much under constitutional government as one with a written constitution; nor is it to be thought that such a government is changing at every whip-stitch or at every popular caprice. England has been the home and source of constitutional government for centuries and has given free representative government to many parts of the world, and her government has been essentially the same in all these years. It has changed from age to age, just as any government must do. It has become more democratic in modern times, just as our government has. But England has constantly struggled for and preserved the essential features of constitutional government, constitutional liberty, and constitutional law. An unwritten constitution is easy to change only in the sense that a nation's habits are easy to change. That is sometimes very hard. While growing more republican in spirit and substance, England has held

An Unwritten Constitution may be Conservative

with habitual tenacity to *kingship* and *lordships* for more than a thousand years. Indeed a country under an unwritten constitution may be more conservative than one under a written constitution. It is true that in a government under an unwritten constitution the legislature is absolute; it may do what it will, even to changing the constitution itself. But it feels bound to legislate and conduct the government on principles that are well known and of record, according to laws that are written and old, and according to habits that are deep-rooted and revered. These are sound safeguards against usurpation, despotism, and tyranny, and the violation of the rights of person and of property; and therefore, the government of such a legislature, while absolute in law, is constitutional in practice.

Our Rights are not Mere "Parchment Rights" *They are older than our Constitutions*

We ought not to think that our rights and liberties are determined for us, or secured to us, by words in a parchment. The rights of the people are guaranteed not by the words of a written constitution but rather by what has been called the *spirit of the constitution* and its *unwritten law*. These include the principles and forces by which the people are moved and controlled, by which the life of the State is governed, — custom, usage, precedent, our political habits, public expectation, the spirit and love of American liberty, on which the nation was founded, and by which it is guided. All these are the forces to be relied upon to restrain the power of legislatures in State or nation. The rights of the people to peace and order, to life, liberty, property, and the pursuit of happiness, existed many years before the Constitution was created. These rights were guaranteed by forces older and above the Constitution. The Constitution is not the fountain from which they flow. That document is the consequence, not the cause, of these rights. It grants no rights to the people, but it is merely the creature of their power, the instrument to secure and defend these rights. Our written constitutions in America have a noble purpose in view, but the sacred thing about them

is the principles and purposes for which they are ordained and established. It is these that deserve our loyalty and reverence, — namely, justice, peace, equity, the public welfare, the blessings of liberty, and equal rights under the law. If any constitution prevents or hinders these things or unduly delays them, it is the right and duty of the people to change it or to overthrow it entirely. Therefore every written constitution must provide for its own amendment, and must be subject to a liberal interpretation that will enable it to grow and expand.

Any constitution that will not bend must break. It must change and expand with the expansion and growth of the country for which it was made. It must accommodate itself to changed conditions or it will be laid aside. If a constitution is too rigid, its provisions will be violated or it will be treated with such loose construction as to be equivalent to evasion. This is not a law-abiding way to act and is likely to beget a disregard for constitutions and laws among the people. But a constitution should contain not statutory matter with a whole lot of specific prohibitions which time may prove to be unwise, but broad fundamental principles of government, stated in general terms. It could, therefore, find room to expand, to adapt itself to social changes for the sake of social justice, not only by the written process of amendment but by interpretation and usage (see p. 191). Our Constitution has expanded in exactly this way and presents certain unwritten features fixed by usage and not by written law. The student should note these as he studies the American Government and the party forces which operate it.

The Unwritten Constitution in America

We summarize here a few of these aspects of the unwritten constitution in America, most of which are indicated or discussed in their proper connection in other parts of the book.

(1) A Presidential Elector must vote for the candidates of his party.

(2) A President may not be elected for three terms.

(3) A Congressman must reside in the district from which he is chosen.

(4) The President's cabinet appointments are confirmed by the senate without question.

(5) A President may remove his appointees without the consent of the senate.

The committee system of conducting business in Congress and the whole party system with its rules and committees and conventions for the control and conduct of parties are the outgrowth of custom or unwritten law. None of these things are provided for by any written law but they are as well established as if they were.

Benefits of the Written Constitution

To safeguard certain rights and interests and to prevent temporary passing legislatures from interfering with them under popular passion and excitement, the people of the United States have established their written constitutions. The people in America believe in these safeguards. They do not like sudden or frequent changes in government and law, and they have thought it safer to put their fundamental rights, to obtain which they struggled for so many years against their royal governments, beyond the reach of their legislatures. They wished to establish a sphere of individual freedom on which no governmental authority was to be allowed to encroach. The people have therefore recited, or inserted, these rights under the form of a "Bill of Rights," in their constitutions, State and national. These rights are sacred and the people have thus solemnly agreed and announced that they shall not be touched, abridged, or denied, not even by the people themselves. This "Bill of Rights" is old, coming to the colonies from the English constitution. In the early days it was the largest and most important part of the State constitutions and it was put into these constitutions before it became a part of the United States Constitution.

Bill of Rights

This "Bill of Rights" provides for freedom of religion, freedom of assembly, freedom of speech and of the press, and of petition; for the right of trial by jury; that no person shall be held to answer for a capital crime except by indictment of a grand jury; that the accused shall have the privilege of the writ of habeas corpus and a right to a speedy and public trial; cruel and unusual punishments, general search warrants and imprisonment for debt, are prohibited, as also are the granting of titles of nobility, the passing of *ex post facto* laws and bills of attainder, and the taking of private property except for public purposes and by due process of law. These "Bills of Rights" usually assert the principles of American popular government, — that all people should have equal rights, that governments originate with the people and all power is inherent in the people, and that the people have at all times the right to change or reform their government as they please.

Provisions of the Bill of Rights

Another way by which the Constitution has grown and the national power has been increased has been by *implied powers*. In this again we see illustrated how the Constitution is not so much what was originally written as it is a matter of usage, decisions, and precedents. Congress may exercise only the powers conferred upon it. But since it may employ any means necessary to carry out these powers, Congress has used a wide discretion and enlarged its own powers by the *means* which it has chosen to adopt in order to do the things which the Constitution permits it to do. It has adopted the doctrine that a power which is granted implies other powers that may be "necessary and proper" for carrying out a power that is granted; that a new power not mentioned in the Constitution as belonging to Congress may be derived or inferred (implied) from a power that is named. This is clear in some cases but not so clear in others.

Implied Powers

Congress has power to "coin money." This is expressed in the Constitution and is, therefore, called an "express power." It would be difficult, if not impossible, to coin money

Illustrations of Implied Powers

without establishing a mint. It is therefore asserted that the power "to coin money" implies or intends to confer on Congress the power to establish a mint. This power to establish a mint is *clearly implied*. No one has ever been so strict in construing the Constitution as to deny that, for how could a government coin money without having a mint? That was clearly necessary. Congress is also given (expressly) the power to "borrow money." Does this *imply* the power to establish a bank? It is not so clear. Money may be borrowed without a bank, but a bank is a very "proper" if not "necessary" means of borrowing money, especially to governments. Congress held the power was implied and established the First United States Bank, thus adopting Hamilton's principle of broad construction and implied powers. Jefferson held that a power, before it could be held to be implied, must be shown to be "necessary," without which the express power would be nugatory. The Constitution gives to Congress the power "to make all laws which shall be necessary and proper" for carrying into execution the powers granted.

Hamilton for Broad Construction

Jefferson on Implied Powers and Broad Construction

Jefferson contended that the necessity ought to be proved. "To take a single step," said he, "beyond the boundaries specifically drawn around the powers of Congress is to take possession of a boundless field of power," and Jefferson held that these words, "necessary and proper," placed at the end of a list of limited powers, ought not to be so construed as to give unlimited powers.

Our system of government during its history has held a pretty even balance between the views of Hamilton and Jefferson. The national Government has not been allowed to assume unlimited powers, but implied powers and liberal construction have prevailed to give Congress the powers essential to meet emergencies and to provide for our national development and preservation. The people have virtually accepted Chief Justice Marshall's construction of the Constitution, who recognized both limited powers and broad construction.

"This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising and will probably continue to arise as long as our system shall exist. . . . The powers of the Government are limited and its powers are not to be transcended. But the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people. Let the *end* be legitimate, let it be within the scope of the Constitution, and *all means* which are appropriate, which are plainly adapted to that end, and which are not prohibited but are consistent with the letter and spirit of the Constitution, are constitutional." [1]

Distribution of Powers to State and Nation

General Restrictions of the Constitution restrain the United States, not the States

It should be remembered that the general restrictions imposed upon government by the Constitution are restrictions upon the government of the United States, not restrictions upon the States, unless the States are especially mentioned. For example, "No bill of attainder or *ex post facto* law shall be passed." [2] This prohibits the United States but not any State from passing such laws. To prohibit the States from passing such measures it was necessary that the Constitution should say in addition, as was done in the next section, "No State shall pass a bill of attainder or *ex post facto* law." Unless the States are specifically mentioned, the limitations imposed by the United States Constitution are imposed on the national Government only, not on the States. So long as the States do not infringe upon expressed provisions of the Constitution especially addressed to them, or upon those implied in the whole scope of that instrument and in the grants of power to

[1] Marshall in the case of McCulloch *vs.* Maryland, 1819.
[2] Constitution, Art. I, Sec. 9.

the General Government, they may regulate their own domestic affairs in their own way. [1]

Classification of Powers

Thus we find the Constitution distributing the powers of government between State and nation. These powers are classified as follows: [2]

1. Powers vested in the national Government alone.
2. Powers vested in the State governments alone.
3. Concurrent powers, or those that may be exercised by either State or national Government.
4. Powers forbidden to the national Government.
5. Powers forbidden to the States.
6. Powers forbidden to both governments.

The Nation has Inherent Powers, those essential to National Life

While the *theory* of our Constitution is that all unrecited governmental powers rest where they rested before the adoption of the Constitution, — that is, with the States, — yet in practice it has not been so. The *theory* is that the powers of the States are *original* and *inherent*, those of the national Government are *delegated*, — that is, the latter are definite and restricted, enumerated and defined by the Constitution, while the State powers are "general and residuary," residing as of right where they originally belonged. But as a matter of fact the national Government is more than a government of delegated powers. It has come to exercise "original" and "inherent" powers, — powers that have come to it from the nature of government, from necessity and usage, that is from the law of the unwritten constitution. They have been called *resulting powers;* they come from the very character of the national Government itself and from the functions it has to perform, — from the whole scope, nature, and purpose of the Constitution.

[1] Compare this with the passages in Chapter VI on the States and their Government, pp. 146–150.

[2] Let the student from a study of the Constitution name some powers belonging to each class.

Growth by Resulting Powers

To illustrate, the national Government is given the power to make treaties. *Resulting* from this is the power to provide for the transfer or purchase of territory. This is not *implied* in treaty-making, it is not a *means* of making a treaty; but it *results* from the custom and usage in treaty-making. Defining boundaries and readjusting territory has always been a subject of treaties, and all customary treaty-making subjects, or war-making subjects, or international subjects, come within the scope of the national powers. The nation may, of course, preserve its own life and, as a result, the national Government may exercise every power essential to the life and processes of a *nation*. It must be allowed to perform every national governmental function which any national sovereign government can perform, which is not denied to it by the Constitution. The use of these natural inherent powers is usually criticized, from time to time, as unconstitutional, but the attempt to prevent their use has proved futile. And the extent to which they have been used has so far substituted an *unwritten* for a *written* constitution in America; or it may be said to have marked the advance of our unwritten constitution by interpretation and usage.

Growth of the Constitution

Amendments and the Amending Process

The Constitution has changed and grown in three ways: 1. By amendments. 2. By construction. 3. By usage. The Constitution provides for its own amendment in two ways: (1) Congress may by a two-thirds vote of each house propose an amendment. If this be ratified by the legislatures (or by conventions, as Congress may decide) in three fourths of the States it becomes a part of the Constitution. Seventeen amendments have been obtained in this way. The first ten, however, were submitted at the very first session of Congress in answer to the demands of many of the States expressed upon ratifying the Constitution, and these may almost be said to be a part of the original instrument. They were

adopted to safeguard the rights of the States and the liberties of their citizens against encroachments or abuses by the central government. The Thirteenth, Fourteenth, and Fifteenth Amendments are known as the "war amendments." They were adopted during civil war and reconstruction, while the Southern States were out of their normal relation to the Union. The Eleventh and Twelfth Amendments are explained elsewhere (see pp. 327 and 237). (2) The other process of amendment provides that Congress is bound to call a convention of all the States "for proposing of amendments" if two thirds of the States (through legislatures or conventions) request that this be done. Any amendments proposed by this national convention would have to be ratified by three fourths of the States, as in the other way. No amendments have ever been obtained by this process.

We have never had a second convention like that which made the Constitution in 1787. If one should be called by Congress on the demand of two thirds of the States (Congress would have no option if the States requested it) it might proceed not merely to propose amendments but to make an entirely new constitution, — as the Convention of 1787 did, which was called to propose amendments to the Articles of Confederation. In recent years some of the more radical people who have been dissatisfied with the United States Constitution and the slow, hard method of amending it, have thought of working through the States for the calling of a national Constitutional Convention, in order that an entirely new and more democratic constitution may be obtained.

Two new amendments have been added to the Constitution in recent years. The Sixteenth Amendment authorizes Congress to impose an income tax without apportioning it among the States according to population.[1] This amendment was

[1] The income tax decision of the Supreme Court in 1895 held the income tax to be a *direct* tax, and the Constitution requires that such taxes, like representatives, must be apportioned among the States

Sixty-second Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the fourth day of December, one thousand nine hundred and eleven.

JOINT RESOLUTION

Proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section three of Article I of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

Champ Clark,

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

FACSIMILE OF THE 17TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

submitted to the States in 1909, but did not receive a sufficient number of ratifications until 1913. It was declared a part of the Constitution by Secretary of State Knox, February 25 of that year. The Seventeenth Amendment, providing for popular election of senators, was submitted by Congress to the States in 1912 and was declared adopted by Secretary Bryan May 31, 1913. Agitations for the popular election of senators had been kept up for over twenty years, and for the income tax amendment ever since the adverse decision, but the friends of these policies, though public sentiment was favorable, found it slow and difficult work to get the amendments adopted.

Many people have felt that the process of amendment is so slow and difficult that the *amending process* should be amended. A "gateway amendment" has been proposed for the purpose of making all future amendments easier. The "gateway amendment" proposes that the amending process shall be so changed as to provide that a mere majority of Congress may submit amendments to the States. These shall be voted on by the people of the States and if a majority of the States together with a majority of those voting in all the States declare for the amendment, then it shall be declared to be a part of the Constitution. If a majority of Congress refuses to take the initiative in proposing an amendment, the favorable action of ten States by their legislatures may require its submission. Thus one house of Congress could not block an amendment and a majority of the States and people could more easily obtain one. It has been held that a State may reconsider and recall its rejection of an amendment but it may not rescind its ratification of one. That is, a State may undo unfavorable action but it may not undo favorable action.

A "Gateway Amendment"

according to population. Constitution, Art. I, Sec. 2. The income tax of 1894 exempted incomes above $4000, and this required a proportionately larger number of people to pay in States like New York, Massachusetts, and Connecticut than in Western States like Iowa or Arkansas.

Growth of the Constitution by Construction: The Great Function of the Supreme Court

The Constitution has grown much more by constructing and interpretation than by amendment. In this is shown the great function and influence of the Supreme Court in the growth of the Constitution and the changes to be noticed in our Government. By liberal or broad construction the Constitution has been greatly developed and the powers of Congress, of the President, and of the central government have been enlarged far beyond the thought or intention of the most of the men who made the Constitution. Since the Constitution is largely what the Supreme Court says it is, the sayings and decisions of that court are looked to as the law of the Constitution by which the powers of government are extended or limited. For the most part, during a hundred and twenty-five years of our history, the national powers have been extended and the State powers limited.

Marshall's Principles of Construction

The construction of the Constitution by Chief Justice Marshall was one of the most influential agencies in promoting change and development in the Constitution. He laid down two rules, or canons, of construction: 1. Every power claimed for the national Government must be shown to have been granted. The presumption was not in favor of such a power; the burden of proof rested with the one who asserted it. He must point out the language of the Constitution by which it was expressly granted or implied. 2. When it was shown that the purpose or end of the power claimed for the national Government had been authorized by the Constitution, then any reasonable *means* which Congress saw fit to use to carry out that purpose or to reach the end in view, might be employed. The court would be strict in determining the existence of a power, but liberal in carrying out the power if found to exist. If the people have conferred the power in the Constitution, Congress is unlimited as to the means which may be taken to realize the end that may rightfully be claimed.

TOPICS AND QUERIES

1. What are the advantages of an unwritten over a written constitution?
2. Show how the desire to restrain the exercise of power led to the written constitution in America. Is there evidence to indicate that the framers of our Constitution looked upon government as an evil thing?
3. Are the liberties of the people better safeguarded under one kind of constitution than the other? Why?
4. Show how implied powers became necessary.
5. Why are certain acts *twice* forbidden in the Constitution?
6. What *motives* prompted the difference between Hamilton and Jefferson in their construction of the Constitution? What was the attitude of each of these leaders toward government in general?

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CHAPTER X

THE FEDERAL REPUBLIC: THE RELATION OF THE STATES TO THE NATION

A FEDERAL republic [1] is one that is formed by a union of republics. Its powers are decentralized, or divided among local governments, also republican in form, which have a certain amount of independence and power of their own. Our States were republics before they formed the Union.

The American Union

Our States had been parts of the British colonial empire, but in 1776 they declared their independence. They acted in unison to do this, but after obtaining its independence each State was free to govern itself in its own way.

The States, while carrying on together their war for independence, first formed a *Confederation*, or *League*. This is a form of government in which a number of political bodies (they might be monarchies or republics) are united together for certain purposes, especially for purposes of common defense and to take care of common interests. The members of the Confederation, or League, are not individual men, but States, or nations, and it deals with and acts upon States, not upon individual citizens. If the States separate from one another the Confederation disappears.

The Confederation

[1] A Federal republic may be more or less centralized. It depends upon the extent and character of the powers exercised by the central government. Our republic is now more centralized than it was in the beginning. France, now highly centralized, was, centuries ago, a group of almost independent monarchies, or dukedoms, — Burgundy, Brittany, Aquitaine, etc., each for itself making war, coining money, erecting courts to try offenders, etc. The rise of a central monarchy and the subordination of the dukes and counts to a national king was the growth of centuries. The French nation was already consolidated when it became a republic.

The Federal Nation

America is a decentralized Federal republic. The American government does not represent a mere league, for it does not depend entirely upon the communities called States. It is "made up of commonwealths but it is itself a commonwealth, because it claims directly the obedience of every citizen and acts immediately upon him through its courts and executive officers. Still less are its minor communities, the States, mere subdivisions of the Union, like the counties of England or the departments of France. They have over their citizens an authority which is their own, and not delegated by the central government. They have not been called into being by that government. They existed before it; they could exist without it. The Union is more than an aggregation of States, and the States are more than parts of the Union." [1]

America not a League of States

Both the Confederation and the Federal nation indicate a union of States, but the union that formed the Federal nation created a new state or sovereign nation. It is a state made by a union, not merely a union made by States. It is a banded state, not merely a band of States.

The student will notice here that the relation of an American State to the nation is quite different from that of a county to the State. The county in one of the States of the Union is like a county in England, or a department in France, merely a division or district carved out for convenience in administering and enforcing laws for local purposes. Counties are created by the State; two of them may be united into one or one of them carved into two, as the central power of the State may wish and determine. Under the Constitution (for all State purposes and powers) the State is a little centralized republic with full powers over all communities within its borders, and all local bodies or districts are subject to its control.

Relation of the County to the State

[1] Bryce, *American Commonwealth*, Vol. I, p. 16.

The counties did not federate to make the State, as the States did to make the Union. They are merely administrative parts of the State.

The Federal *vs.* the National Principle

In 1787 the term *federal* was used to mean what we now mean by *confederate*, and was used in contradistinction to *national*. From 1781 to 1787 ours was a *confederate* government but it was always called *federal*.[1] It was a government of States, made by the States, operating on the States, or through the States, and it could be dissolved or abandoned by the States, as was done in 1787 when the new Constitution was made. A division of sentiment existed in 1787 as to whether a *national* government should be formed. The large States wished to do this, but the small States were unwilling. Consequently a compromise was brought about, and some uncertainty was felt as to whether a *national* government had been formed.

Again the student must be referred to his American history. The Southern people, following their statesmen, like John C. Calhoun and Jefferson Davis, afterwards contended that a *confederate* government had been retained in 1787 and they objected to its being *nationalized* and consolidated. They claimed that the States had not surrendered their sovereignty. They had *delegated* it to be used only for certain purposes, but had retained the right to resume their full sovereignty and independence by secession. They claimed the right to preserve or reëstablish the kind of a union which, as they contended, their fathers had made, and therefore they sought to set up the *Confederate States of America*.

The Complex National-Federal Character of our Government

As we study our government under the Constitution we can see that it is *partly national* and *partly federal* (confederate). In its *origin* it is *federal*. That is, the Constitution was made by the votes of States and was ratified by the people in States, not by the whole national people at large. On the basis of *power and representation*, the government is *partly national*,

[1] In this passage we use the word "federal" in the sense of *confederate*.

partly federal. In the House numbers of people are represented, regardless of statehood, the States being used merely as convenient areas or districts for apportioning power. This is a national idea. But in the senate the States are represented as States, — a federal idea. In the election of the President the same complex character of government is seen. Each State is assigned two electors because it is a State, and then more in proportion to its population.

In the *operation* of its powers the government is *national*, not *federal.* It operates on and controls the individual citizen directly. It does not depend on the States for the enforcement of its laws. It does not need to operate through the States but it may act, as any other nation, of its own right and power. In the *extent* of its powers our government is *partly national* and *partly Federal.* It may do some of the things which all national governments may do while others are left to the States. It may coin money and make treaties, but it may not license a man in Maine or Kansas to teach school or keep a saloon. The national Government is one of *limited* powers. This division of powers is more fully discussed in the chapters on "The Powers of Congress" and "The States and their Government."

Division of Powers between State and Nation

How Government Powers are divided between State and Nation

So we see that the people of the United States, acting through their States, created a Constitution which recognizes two governments, State and national. To each of these governments they gave certain powers, the nation to be supreme in certain respects, the State in others. The laws of the nation are supreme as to all objects assigned to it; the laws of the State are supreme in the same way. Both governments are the agents of the same supreme power, the people; both derive their power from the same source.

The nation, or the national people embracing all the States, is supreme over all and may change this assignment

or allotment of powers at any time. This is merely saying that the people of the United States are a *nation*, sovereign and free to change its form of government as it will. It could establish a monarchy or become a part of the British Empire if it chose to do so.

Of course, there cannot be two supreme powers over each other, but each can be supreme in the sphere assigned to it by the Constitution. The national Government possesses those powers which it can be shown the people have conferred upon it, and no more. All the rest belong to the State governments, or to the people themselves (see p. 189). The Supreme Court has become the umpire, or final arbiter, to define the respective spheres of the State or national Governments, and to prevent one from encroaching upon the other (see p. 329).

Defining the limits of power between the State and the nation; or determining the rights of the States and the powers of the national Government; or deciding whether under the Constitution we really were a nation, — this issue has been the greatest subject of controversy in our history. Very early it became the basis of division between political parties. It led to the historic struggles over nullification and secession. The Constitution left it a debatable question, but the decisions of our Supreme Court, our growth toward unity, commercial interests, and economic forces, and especially the great Civil War, have settled it. Now it is admitted by all that the Union is not a league, a mere compact of States, but it is a nation, one and indivisible, — an "indivisible union of indestructible States." [1]

Forces Leading to Nationalization

The origin of this union and its growth have been the most important subjects in our national history. A constant aim has been to preserve a fair balance between the State and the Nation, between the *centrifugal* and the *centripetal* forces in our Government. In the convention of 1787, which made the Constitution, the Federal Union was very aptly compared

The Union like the Solar System: Centrifugal and Centripetal Forces

[1] The Supreme Court in Texas *vs.* White.

to the solar system, the national Government being called the sun and the States the planets, each moving in its proper orbit. If the centrifugal force became too strong the planet states would fly off into space and be lost; if, on the other hand, the centripetal force became too strong the States might be drawn into the sun's consuming center and be melted into a consolidated mass. The people of America have established a dual system, with a Federal Government representing the nation, which will not permit itself to be destroyed, and this government is to safeguard all national interests; while at the same time they have preserved the States with full powers to take care of all their local domestic concerns. While the American people constitute a nation like the people of any other country, yet they act and are governed not as one solid mass of people but by means of their several States, organized and acting as separate political communities. So the Federal republic of America may be defined as a *federal-national democratic republic, not consolidated but federal, with local self-government in the States under the protection of a united nation.* This enables a strong government to operate over an extended area while preserving local governments close to the people for local affairs. Such is the *e pluribus unum* of the American Union. [1]

TOPICS AND QUERIES

1. Explain how in American history a confederation of States grew into a Federal nation. Explain these terms and tell what conflicts, in forum and field, occurred over this growth.
2. What nationalizing influences promoted the change from a confederate to a national government?
3. Illustrate the difference between the relation of a county to the State and the relation of a State to the nation.

[1] The distribution of powers between these two governments, Federal and State, is discussed in subsequent chapters.

For the merits and demerits of the Federal system of government as compared with those of a consolidated national system, see Bryce's *American Commonwealth,* Vol. I, pp. 341–359, Chaps. XXIX, XXX.

4. Explain how the framers of the Constitution came to divide the powers of government between the State and the nation? What kind of powers did they wish to assign to each? What conflicts followed as to the limits of the powers of each? Who is the umpire in cases of dispute? May any power overrule the umpire's decision?

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CHAPTER XI

POLITICAL PARTIES, PAST AND PRESENT

THE Government is managed by parties. If we are to understand how we are governed we must understand how our parties are governed. If we wish to govern ourselves we must govern our parties. All our officers, from the President down to city councilmen and township officers, are usually nominated by party processes and elected on party tickets. The party is the means, or agency, by which representative popular government is carried on.

Government by Party

THE PRESIDENT A PARTY LEADER

The history of America shows that all the Presidents except Washington were elected as *party leaders*. They conducted their administrations not only with a view to the welfare of the country but with a desire to promote the interest and success of their respective parties. Every President after Washington has made up his Cabinet out of his own party leaders. There have been so few exceptions to this practice since Washington's time that they may be disregarded, and these few have occurred for party reasons and from party tactics.

Every President since Washington has taken counsel of his party managers in the States. His appointments were from among his party followers and workers, and in many ways the President has sought to strengthen his party, and to make it successful in the next election. Washington sought to conduct his administration without regard to party. He deplored party strife and an excess of party zeal. He feared

Washington's Attitude toward Parties

that parties would become *sectional*, divided by geographical lines, and that men would be sectional partisans rather than national patriots, and that party struggles would divide the country into factions and prevent what America then needed most of all, — the spirit of unity and a love for a united country that would enable the States to maintain their independence against foreign influence. Moreover, Washington looked upon the Presidency, as did many of the men who framed the Constitution, as being an office apart from parties, or above parties, like the English kingship, and he sought at first to conduct his administration by holding a fair, judicial, and impartial attitude toward differing party groups.

Hamilton *vs.* Jefferson

He therefore called into the same cabinet Hamilton and Jefferson, who differed on almost every public question and who turned out to be bitter opponents of one another and the leaders of their respective parties for the next ten years. Even while they were together in Washington's Cabinet these two leaders fought one another like Kilkenny cats on almost every question that arose. So Washington had to decide between these opposing advisers when disputes occurred. When he leaned, for the most part, toward Hamilton, on the financial and constitutional issues that came up, Jefferson soon resigned and became the leader of a party of opposition. Jefferson thought Washington had been led astray by monarchical English influences.[1]

The President's Cabinet must be homogeneous in Politics

It was found even before Washington's term expired that the President and his Cabinet would have to be *homogeneous* in politics, — that is, they would have to be, in the main, of the same mind, opinions, and purposes in matters of public policy. They must all stand together and pull in one direction or the administration would be wrecked and could accomplish nothing in carrying out public measures. This made the administration and its supporters a *party*, and those who opposed their policies became the *opposition* party. From

[1] See Jefferson's Mazzei letter.

The Party Administration and the Opposition

Washington's time to the present day there have been two main parties in the country contending for the control of the government, — the party *in power* striving to stay in and the party *out of power* striving to get in. These parties have been known by different names and there have been a number of minor parties organized for special purposes, but all through our history men have understood that the government is to be controlled and administered by a party. Wherever, as in our country, men are striving to govern themselves, the great moving forces that are organized for controlling the government and determining its public policies are political parties. It is therefore very important that we should understand how these parties are organized and how they do their work.

Political Parties Defined

"A party is a body of men united for promoting by their joint endeavors the national interest upon some principle on which they are all agreed."

What is a Political Party?

This is Burke's famous definition of a party. In general it may be accepted as what a party *ought* to be. It is a wise conception of the *general nature* of a party. But as a description of either of the two large political parties in America, either now or for many years past, it cannot be fully accepted. It would certainly not be quite accurate to say that either the Republican or the Democratic party is now, or has been for twenty years past, composed of men who are "united" for promoting some principle or policy on which they are "all agreed." Each of these parties has been sharply divided within itself in recent years. When a party is young and out of power its members are more likely to be united on certain great principles and policies which they wish the government to adopt. But when the party grows larger and gets into power, and especially when the times change and new conditions and new issues arise, the members of the party naturally tend to divisions and quarrels among themselves.

Divisions and Factions within a Party

Instead of the members of our political parties agreeing among themselves, the men who are really agreed on the new principles and policies are often to be found in different parties, and the differences and conflicts between the two wings of each party (the *radicals* and the *conservatives*, it may be) become more pronounced and bitter than are the conflicts between the two opposing parties themselves. The conflicts and antagonisms are *within* the parties rather than *between* the parties. This has been illustrated several times in our history. It was illustrated when the slavery question arose, and it is well illustrated in recent politics on what has come to be known as *progressive* policies. So, since men who are nominally in the same party differ stoutly on public measures and political tendencies we should look for another definition of a party.

Bryce's Definition of an American Party

"What constitutes a party? In America there is a simple test. Any section of men who nominate candidates of their own for the presidency and vice presidency of the United States are deemed a national party." [1] Of course, a true party should represent issues and principles, since where these do not exist a party depends for its success upon its *organization*. It must have pledges first and principles afterwards; its members, having first decided to agree, must make up their minds as to what they are to agree about. This is an artificial or an unhealthy condition, or idea, of a party. We ought, then, to define a party as a more or less organized group of citizens, acting together as a political unit, professing to share the same opinions on public questions and exercising their voting power to obtain control of the government by nominating a ticket for President and Vice President. This definition harmonizes with the facts and by it we see that there are several political parties in America at the present time, as there have been many more in the past.

[1] Bryce, *American Commonwealth*, Vol. II, p. 41.

The Leading American Parties

Republican and Democratic Parties

The principal parties in America for more than fifty years have been the *Republican* and the *Democratic*. Since 1861 the Republican party has been "in power," — that is, it has controlled the presidency — with the exception of the two terms of President Cleveland (1885–1889; 1893–1897) and the two terms of President Wilson. Some may count President Johnson's term as democratic (1865–1869). Andrew Johnson was elected as a "Union" man in 1864 to the Vice Presidency, with Lincoln, and when he became President, he opposed the Republican leaders in Congress. He was really never a Republican. During these fifty years the Democrats have been in control of either one or both houses of Congress for a part of the time, and also for much of the time of several of the States. All of the former slave States, known as the "Solid South," have been Democratic during most of this period, owing chiefly to the race problem and the issues and recollections of reconstruction times. The States of New England, Pennsylvania, and the Northwest have generally been Republican, partly on account of the divisions and traditions coming down from the Civil War, partly on account of their interest in a protective tariff and the gold standard of money.

Differences between the Two Large Parties

It is not easy to tell the differences between these two parties as they are constituted to-day. In general it may be said that the Republicans favor a high protective tariff while the Democrats favor a "tariff for revenue only," although among the Republicans there are many men who have been willing to "revise the tariff downward," while several Democratic Southern States, where factories have been rising or sugar interests are important, as in Louisiana, have leanings toward protection, as has always been the case among the Democrats of Pennsylvania and the Northern manufacturing centers. As a rule, on questions of the rights and powers

Tariff

States' Rights

of the States as against the National Government, and on strict construction as against broad construction of the Constitution, the Democratic party will be found on the side of the States and strict construction, while the Republican party has been on the side of broad construction and national powers. These issues, speaking broadly, have been the continuing basis of division between the parties for more than a hundred years. However, the parties have not been clearly tested on nationalism and States' rights within recent years, and on any specific case that might arise they would be likely to be found divided among themselves.

In 1894, during the great railroad strikes in Chicago, President Cleveland and Governor Altgeld of Illinois, both Democrats, differed on this subject, the President asserting the Federal power in Illinois over the protest of the Governor, who stood for the power of the State to take care of itself without interference. The difference, however, was not so much on States' rights as it was a difference in the attitude of the two men toward the social and labor problems of the day.

The party *in power* is more inclined to broad construction and national powers, while the party *out of power* is disposed to oppose these policies, and neither party in itself is altogether united on the subject. But historical traditions and tendencies have distinguished the two parties as we have indicated.

Authority *vs.* Liberty: The Extent of Government Powers and Enterprises

As a rule the Democrats are more disposed to leave men to themselves, with only as little interference from government as necessary. This party is inclined to stand for liberty as against too much government, on the Jeffersonian principle that "that government is best which governs least." On the other hand, the Republicans, like the Whigs and Federalists before them, are disposed to think more of law and order and governmental restraints and are willing to rely more on the

authority of the government. They are more ready to increase government functions and projects, — such as banks, tariffs, internal improvements, ship subsidies, colonial expansion, an enlarged navy, etc., though on some of these and other governmental projects like a parcels post, government telegraph, telephones and railways or regulation of railway rates, pure food laws, and control of the trusts, we find again each party divided within itself, with the Democrats rather more disposed than the Republicans to allow the Government to assume these larger functions in the interest of the people. It should be understood, therefore, that it is only by these *general tendencies* that the parties are to be distinguished from each other, and men of different kinds and shades of opinions on all these subjects are to be found in each party.

Party Divisions

Since 1896, when Mr. Bryan became the chosen leader of the Democrats, and in 1901 when Mr. Roosevelt came into the Presidency for the Republicans, the differences within each party on these larger powers for government have been more pronounced, a radical and a conservative wing appearing in each party. Conservative Democrats differ very little from conservative Republicans, and the radicals in both parties are very much alike.

These differences within the Republican party in 1912 split that party in two, the radicals following Mr. Roosevelt, the conservatives following Mr. Taft. Factional and personal quarrels and certain party abuses also aided in promoting this division.

Essentially the same divisions have existed within the ranks of the Democratic party, Mr. Bryan being one of the leaders of the Democratic Progressives. He was influential in bringing about President Wilson's nomination in 1912. Democratic Progressives remained within their own party and many

progressive Republicans voted for Wilson against President Taft.

The *conservative* is one who is disposed to be satisfied with things as they are, who looks with indifference, if not with hostility, on proposed remedies and reforms; who tends to revere the past and look with suspicion and fear on all changes; whose chief concern in government is for order, safety, and stability. He may not oppose progress, but he would first make sure he is right; and he would seek approval in old and well-established methods and principles. He especially dislikes to have agitators and reformers "tampering with the foundations and pillars of the State." If he is an extreme conservative he is called a *reactionary*, one who opposes progress and wishes to go back, or hold back, to old principles or policies that have been discarded by the people, or to return to the methods and institutions of the past. The reactionary is sometimes called a *tory* or *bourbon*, terms derived from English and French history.

The Conservative and the Radical

The *radical*, on the other hand, is one who seeks changes and reforms. He wishes to go to the *root* of political evils. He believes that government is like an organic body, — it must grow and expand and adapt itself to new conditions of society; that it is subject to diseases which must be uprooted and cast out. He is optimistic and eager for new experiments and does not hold to institutions and laws merely because they are old. If he is an *extreme* radical he may be a *revolutionist*.

The *conservative* is more likely to stand for property and privilege, the *radical* for liberty and democracy. Conservatism looks with suspicion on liberty, for fear of license and disorder; radicalism looks with suspicion on governmental and constitutional restraints, for fear of despotism and oppression. In driving Uncle Sam's team, conservatism is more likely to use the *brakes*, radicalism the *whip*. Radicalism may mean progress and betterment, but it might also

mean destruction. Conservatism may mean safety and peace, but it might also mean stagnation and death. We may say that we ought to seek a golden mean, to be *conservatively radical*, that is, liberal and progressive but not revolutionary.[1]

The *liberal* is the *moderate* radical who wishes to reform existing institutions, but not to upturn them; he wishes to go forward, but not too fast. The liberals claim to be true *progressives* and they are found in both of our large present-day parties. If reactionaries and conservatives were together in one party and liberals and radicals were together in another party, we should have a natural division of two great political parties, resting on fundamental psychological principles. But men representing different degrees of these tendencies are divided among the several parties, — Republican, Democratic, Progressive, Socialist.

The Liberal

The radicals call themselves "progressives" and their opponents "reactionaries" and "standpatters," that is, those who stand fast for the old lines. The Republican "progressives" in Congress under Republican rule were at first called "insurgents," because they were in revolt against their party "system" and the control of legislation by a small coterie of leaders in charge of the machinery and management of the House and Senate. They rebelled against what they called the autocratic one-man power of the Speaker and the "big business capitalistic oligarchy" in the Senate. The Conservatives deplored the dangers to business and to property and prosperity by agitations and changes that are led by men whom they looked upon as discontented and emotional reformers, and whose teachings (as the conservatives claimed) were leading the country toward socialism or anarchy.

The policies that have been urged by the "Progressives" of all parties may be summed up as follows:

[1] See Leacock's *Elements of Political Science* for a definition of the Liberal.

Progressive Policies

1. Equal industrial opportunities for all, and equal punishment for all illegal acts, whether committed by large corporations or by individuals. They claim that money and large corporations have had too much weight in making and enforcing the laws, and that the people should strive for industrial democracy as well as political democracy.

2. Government regulation of public service corporations, especially the railways, which should be brought under more direct public control and be made to serve all equally. Many of the Progressives urge a government telegraph and government telephones. This includes a physical valuation of railroad property as a basis of taxation and the regulation of rates.

3. The development of water-ways, to supplement and to help control the railways, as avenues of transportation.

4. The promotion of agriculture by encouraging small holdings of land and giving titles to home-seekers.

5. The conservation of public resources under national authority, — water power for irrigation, the forests, the mines, and ungranted homesteads for home-seekers.

6. Popular election of United States Senators and of delegates to party conventions, under some plan like that in use in Oregon. This has now been secured by the Seventeenth Amendment.

7. The income tax, inheritance taxes, franchise taxes, and other tax reforms.

8. Direct control by the people in law-making and in the conduct of their political parties by means of the *initiative*, the *referendum*, and *direct party primaries* (see pp. 36–52).

9. Equal suffrage for all, men and women alike.

10. To these may be added the short ballot, preferential voting, and efforts for what has been called "social justice," that is, that the richer and more powerful classes may not cheat the public or work injustice to the laboring masses.

These are some of the issues which both political parties

are now struggling over within themselves. Some of these reforms have already been obtained. It will be seen to be a struggle for proposed or radical reforms, and, for the most part, a struggle for more democracy, for a more direct rule by the people themselves as against representative government under the old forms, for a square deal and equal rights for all.

Minor Parties

In addition to the two large parties there are a number of minor parties, sometimes called "third parties."

The *Prohibition Party* has lived longer than any other third party in our history. It first nominated a presidential ticket in 1872, and has had a national ticket in the field in every campaign since. The party stands for the abolition of the manufacture and sale of intoxicating beverages. It claims that this is the most important issue before the people and that the other issues on which the Democrats and Republicans seek to divide the voters are "subterfuges under the cover of which they wrangle for the spoils of office." In 1872 the party polled 5608 votes, and in 1912 it had 207,965 votes. The party is made up of morally earnest and faithful men. It has been successful in leading old party legislators in some of the States to favor local option and other anti-liquor laws for fear their voters of prohibition leanings might otherwise go off into the Prohibition party. The "Anti-Saloon League," representing a coöperation of church anti-liquor workers, is made up of men of all parties and is not identified with the Prohibitionists

The Prohibitionists

The *People's Party*, or the "Populists," appeared in 1892 as a successor to the Greenback and Labor Reform parties. It was an attempt in politics to combine the laboring classes,—the organized labor of the cities and the farmers' Granges and Alliances of the country. In 1892 it polled more than 1,200,000 votes for James B. Weaver for President, and this entitles it to be called the *largest* "third party" in our his-

The Populists

tory.[1] In 1896 the influence of this party was quite powerful in determining the course of the Democratic party. After Mr. Bryan's nomination by the Democrats on a platform favorable to some of the Populist demands, this party indorsed him for President, and a fusion was brought about between the Democrats and the Populists. The Populists who refused to join the fusion kept up for some time independent nominations and were known as the "Middle-of-the-Road Populists."

The Populists demanded that the railroads be brought more fully under State control and ownership, in order to secure fairer treatment to the producers, consumers, and shippers; that the public lands, the "heritage of the people," should not be monopolized for speculative purposes, but should be reserved for actual settlers; that the telegraph and telephone systems, like the post office, should be owned and operated by the Government in the interest of the people, with all government employes under strict civil service regulations; that there should be an increase of the currency to $50 per capita, by the issue of greenbacks as full legal-tender money, issued directly by the Government and not by the banks; and, along with this, that there should be free and unlimited coinage of gold and silver; a graduated income tax; a postal savings bank. The party also recommended the iniatitive and referendum. It will be seen from these demands that the People's party was the forerunner, the sponsor and promoter, of many of the "progressive" policies of the present day. It represented, in some respects, a tendency towards socialism, in calling for a larger State agency and activity in solving our industrial problems.

The Socialists

The Socialist Party in the United States was formed by a

[1] The Progressive Party in 1912 was the *second* party in number of votes (over 4,000,000). But the Republican Party in that year should hardly be thought of as a "third party" in the ordinary sense. Its vote may be thought of as having been divided under two names.

union in 1900 between the *Social Democratic* party and the *Socialist Labor* party. An organized body of Socialists existed under the name of the *Socialist Labor* party as early as 1877, but the party first appeared with a presidential ticket in 1892, and polled 21,000 votes. The *Social Democratic* party was organized in 1897 under the leadership of Eugene V. Debs, partly as a result of the failure of the great railway strikes of 1894. In 1900 these two socialist parties united and nominated Eugene V. Debs, of Indiana, for President, and Job Harriman, of California, for Vice President. The United Socialists have since been known as the *Socialist* party, and Mr. Debs was its presidential candidate at every election till 1916.

Some of the followers of the *Socialist Labor* party refused to go into the union. They have since kept up a separate party and have nominated separate tickets. They represent only a small and extreme class of socialists, their ticket in 1916 receiving only 29,071 votes.

The vote of the Socialist party has increased from 87,000 in 1900 to 420,000 in 1908, and to 898,296 in the national elections of 1912, though the vote declined to 590,000 in 1916. The party has elected two Congressmen (Victor L. Berger, of Milwaukee, and Mr. Meyer London, of New York City), the mayors of several cities, and some members of State legislatures.

The Socialists generally favor putting the unemployed to work on public works and improvements; the public ownership of telegraphs, telephones, railroads, steamship lines, and other means of transportation and communication, and of all other industries in which competition has ceased to exist. They advocate the inheritance tax and the income tax; equal suffrage for men and women; the initiative and referendum; the abolition of the United States Senate, and the taking away from the Supreme Court the power to declare acts of Congress null and void. They form one of our most

radical parties, with pronounced democratic purposes, and with some members of a revolutionary tendency. The Socialists throughout the world have generally been opposed to war, though in the Great European War they have, for the most part, supported their respective countries. The majority of the American Socialists on a referendum vote among the members of the party opposed the entrance of the United States into the war, voting for the statement that Germany's conduct did not justify such a course. Most of the intellectual leaders of this party left it in support of the war, but the party organization has been under the control of pacifists and opposers of war.

TOPICS AND QUERIES

1. Debate: "Resolved, that party radicalism in the past has been of greater service to the country than party conservatism."
2. Debate: "Resolved, that in American politics to-day we need radicalism more than conservatism."
3. Debate: "Resolved, that *third parties* have done more good than harm in our history."
4. Why did Washington wish to make the President independent of parties? Why did he fail? Is it better as it is?
5. Debate: "Resolved, that voters should be more independent of parties."
6. Why is it so difficult to form a third party and bring it into first place? Is the two party system desirable?
7. Was the Democratic party as democratic as the Republican party when the latter was formed, 1854–1860? Why?
8. What is the difference between a Democrat and a democrat?

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See other references following Chapter XII.

CHAPTER XII

PARTIES AND THEIR MACHINERY: HOW A PARTY NOMINATES AND ELECTS A PRESIDENT

The Party Machine

By the party machine is meant the party organization, the committees and conventions that attend to the business of the party. Party conventions meet from time to time to appoint party committees, to nominate candidates, and to set forth the party principles and policies. These conventions are temporary; they come and go, but the party committees which make up the permanent, working part of the machine go on from year to year. The membership of the committees may change from time to time, but the committees themselves are continuous. The Democratic National Committee has been in existence since 1848; the Republican, since 1856. In addition to the national committee for each party there are also State committees, congressional district committees, county committees, city committees, ward committees, township committees, etc. — making a great network of committees throughout the country, each having its own part of the party business to attend to. This calls for a great army of party workers, and these party workers who give their attention to party politics are called the "machine," or the organization. The machine is the working force of the party.

This party machinery of conventions and committees has been in operation for many years, almost as it is now. Let us notice the order and method by which it works in the process of president-making.

The National Committee

In a presidential year, the first step in the process of nominating the presidential candidate is the meeting of the National Committee. The Chairman calls the Committee to meet in Washington early in the presidential year. The *National Committee* is made up of one member from each State. These members are appointed at the previous national convention of the party, each State delegation naming a member to serve for the following four years. In some States it is provided that the party voters may choose their party committeemen on the National Committee by a primary. This is for the purpose of making the Committee more responsible to the rank and file of the party.

Composition of The National Committee

The National Committee issues a "Call" for the convention in the name of the party. This "Call" names the time and place for the meeting of the National Convention, urges all voters who believe in the principles of the party to cooperate in the selection of delegates and tells how and when the delegates should be elected, usually not sooner than thirty days after the date of the "Call" nor later than thirty days before the meeting of the National Convention. The credentials of the delegates must be forwarded to the Secretary of the National Committee at least twenty days before the beginning of the convention.

The "Call" for the National Convention

Until recent years each State was represented in the National Convention by twice as many delegates as the State has representatives and senators in Congress; that is, by twice as many as its electoral vote. Four delegates at large were appointed for each State and two delegates for each Congressional district. Since the apportionment act of 1911 (see p. 272), and the admission to statehood of New Mexico and Arizona, there have been 435 members of Congress in the lower house and 96 Senators. There would be on the old basis, therefore, in the National

Number of Delegates

Convention 192 Senatorial delegates, or delegates at large,[1] and 870 delegates for the Congressional districts, or 1062 from all the States.[2] The Democratic party still retains this historic basis of representation in its national conventions.

How the Method of Representation in the National Convention came about

This method of representation in the party national conventions came about in the beginning of the convention system in Jackson's time, because the parties wished to fashion their party constitution after that of the Federal Government. As the States were represented in Congress for making the laws, so, it was thought, they should be represented in the convention for making the President. Much importance was attached to the *States* in those days and the convention was made on a *federal* basis. Until 1848 each State was allowed only the same number of votes in the convention as it had Senators and Representatives in Congress. Since then twice as many have been allowed. This has resulted in unequal and unfair representation of the party in its convention. Especially has this been true in the representation in the Republican convention from the Southern States where that party is very weak. In all local party conventions — state, district, county, or city — the party is represented in proportion to the number of party voters in the various communities that send delegates. In a State convention, for instance, a county that casts 5000 Republican votes has ten times as many delegates as a county

True Basis of Representation

[1] There would be two more delegates at large for every Congressman elected at large in the State.

[2] In addition to these State delegates, there are also six delegates from Hawaii (as an organized territory), and the Republicans allow two delegates each from the District of Columbia, Alaska, Porto Rico, and the Philippine Islands, while the Democrats allow *six* delegates to each of these territories and possessions. This made altogether, 1076 delegates in the Republican convention until the change of 1916 and 1092 in the Democratic convention. There are elected also an equal number of alternates, one for each delegate, to take his place if the delegate cannot attend. This makes more than 2100 delegates and alternates, who were entitled to admission to the convention hall.

that casts only 500 Republican votes. No one would propose any other plan. Equal numbers of people should have equal power and unequal numbers of people should have unequal power. That is a basic principle of representative republican government.

For fully thirty years proposals for readjusting representation in Republican conventions were made, but nothing was done until after the fatal party smash-up in 1912. Now the Republican party has adopted a new rule for representation in the national convention which was announced in the call for the Republican National convention of 1916. This plan allows only one delegate instead of two from congressional districts where the republican vote in the last presidental congressional election was less than 7500. The number of delegates was reduced by 89, the loss falling mostly on the South, with a slight increase of voting power in the West (where women vote) as compared to the North and East.

The New Republican Rule Reduction of Southern Representation

If more than the authorized number of delegates from any State claim the right to sit in the convention, a contest is deemed to exist and the whole National Committee meets in the convention city a few days before the convention, to decide which of the contesting delegates shall be allowed to sit during the temporary organization and proceedings of the convention. Herein lies the great power of the National Committee. It may unseat duly elected delegates and seat others as it will. Instead of being an obedient agent of the national convention, or an impartial judicial body to see that fair play and justice are done and that the interests of the whole party are safeguarded, it has at times used its powers entirely for one faction without regard to fairness, and thus it may become the directing power to control the convention and determine its actions and nominations. Some authority must make up a rightful preliminary roll of the convention, and this work has always fallen to the National Committee. Later the convention itself, through its committee on credentials, may recon-

The National Committee and Contested Delegates

sider and overrule the decisions of the National Committee and displace delegates to whom the National Committee has assigned seats. But if the National Committee is able to make up a majority of the convention in the first place it will probably be able to control the convention committee on credentials, and the "preliminary roll" as determined by the National Committee is not likely to be decisively changed.

Election of Delegates

In the Republican party the four delegates-at-large (the Senatorial delegates) are elected by a State Convention; the other delegates from the State are elected in district conventions, two from each district.

Differences between the Parties in Electing Delegates

In the Democratic party all the delegates from a State are elected by the State convention and are regarded, not as delegates from local districts, but as delegates of the State. This recognizes the unity and sovereignty of the State and is in harmony with the precedent and principle of the Democratic party. The Congressional Districts are recognized by the Democrats, however, as convenient divisions for *nominating* delegates, but the State, not the Congressional district, is regarded as the unit. The delegates from the various counties to the Democratic State Convention meet in their respective district caucuses the day before the meeting of the State convention, and the delegates to the national convention are chosen in the first instance by these district caucuses, but when each district caucus has chosen its delegates, the names of all from the various districts are reported to the full State convention, which then confirms their election. The delegation is then regarded as a *State* delegation and the State convention may place it under instructions and require it to act as a unit.

The delegates are said to be *instructed* when the convention which appointed them passes a resolution directing the delegates how they shall vote on certain candidates and measures.

In the Democratic national convention the instructions of the State convention are binding and the delegates are required to carry them out; but the Republican delegates, while they are influenced by, are not bound to follow the instructions of, the district or State conventions which elect them. Each Republican delegate is free to vote as he will, though custom and the unwritten party law will likely control his conduct. The convention, however, will record his vote as he casts it.

Instructions

The dissatisfaction with the national convention and the way delegates have been chosen to it has led to a movement for *presidential-preferential primaries*. This is the plan of providing by law to give to the voters of the party an opportunity to express their preference by voting directly upon presidential candidates, or to elect by districts and States their party delegates to the national convention, the delegates to be bound to vote in the convention for that candidate for President for whom the delegate announces himself, or whom the people prefer, as shown by their votes. This plan would enable the party voters to nominate their candidates directly and the delegates will be their agents bound to ratify their choice, just as the presidential electors are in the electoral college.

Presidential Preference Primaries

Already thirteen States[1] have adopted the presidential-preference primaries by law, and other States are preparing to do so, and progressive Democrats and Republicans are urging that it be done in all the States. Oregon not only elects its delegates by popular vote, but provides also for paying their railroad fare to the convention, in order that the delegates may not be under obligation to certain men or certain interests for favors.

The New Jersey preferential primary law may be taken to

[1] Oregon, California, New Jersey, Massachusetts, Wisconsin, Illinois, Nebraska, North Dakota, South Dakota, Pennsylvania, Michigan, Maryland, Montana.

New Jersey Preferential Primary Law

illustrate the new system. This law provides that delegates to the national conventions shall be selected directly by the party voters and may be pledged to support a particular candidate for the presidential nomination. At the same time the party voters may indicate their preference between those candidates whose names shall have been placed on the primary ballot by a petition of 1000 voters among their party friends. The law does not bind the delegates elected to vote for the presidential candidate preferred by a majority of the party voters, but the candidates for delegates are likely to pledge themselves to do so. Groups of candidates for delegates announce themselves, one group favoring one presidential candidate, another group another candidate. The delegates are elected by Congressional Districts, except the four for the State at large. It may happen that the majority of the party preferential vote in the whole State may go for one candidate, while the majority of the delegates elected may be for another. This might be obviated by having all the delegates elected by the State at large or having the preferential expression taken only by districts.

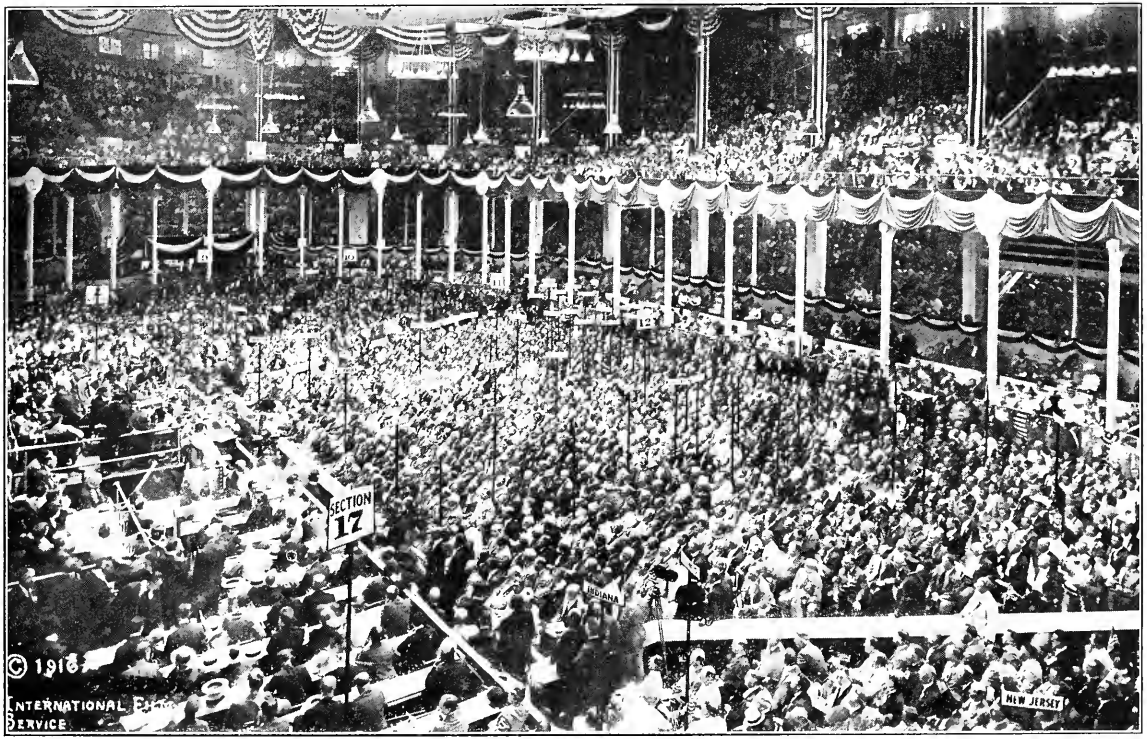
The National Convention

The National Convention

The elected delegates, accompanied by the alternates, together with thousands of visitors in the galleries, assemble at the time appointed in the Call in some "wigwam," or great convention hall. The convention meets to perform two great functions of government: First, to announce the principles on which it wishes to appeal to the people for support. Second, to select the candidate whom it wishes to place at the head of the nation.

The leaders of the party attend the convention from all parts of the Union, and the events, struggles, and conflicts of these conventions present some of the most interesting and dramatic aspects of our history. The chairman of the National Committee calls the convention to order. On behalf of the

Republicans Nominating a Presidential Candidate



Democrats Nominating a Presidential Candidate

Committee he names a temporary chairman, who will likely be accepted without contest. The temporary chairman makes a "keynote speech," in eulogy of the party, of its policies, and its leaders.

Four important committees are then appointed, namely, those on: (a) Permanent Organization, (b) Rules and Order of Business, (c) Credentials, (d) Resolutions. The members of these committees are named, not by the chairman, but by the respective State delegations, one man on each committee for each State. The convention takes a recess while these committees prepare their reports to be made at later sessions of the convention.

The Committee on Permanent Organization reports a permanent president for the convention, with a list of Vice Presidents, Secretaries, etc. The permanent President, on taking the chair, also makes an important speech to the convention and to the country, sounding another "keynote," that is, urging another plea for his party's success at the polls.

The Committee on Rules and Order of Business reports in what order the convention shall proceed with the matters that are to come before it and the special and parliamentary rules by which its business shall be conducted.

The Committee on Credentials passes upon the contest for seats to determine who are the rightful delegates. It may confirm or undo the work of the national committee in seating certain delegates, as has been indicated, and since the report of this committee, if accepted by the convention, will determine who has a right to sit and vote in the convention, its report is one of the first to be acted upon.

The Committee on Resolutions reports the platform to the convention. This is a set of resolutions, or an address, proclaiming the principles of the party and setting forth the promises and policies by which the party hopes to win the votes of the people. The platform usually "points with pride" to the achievements of the party, "deprecates" the policies

The Platform

of the opposing party, and "views with alarm" the prospect of its triumph. Sometimes where there is a division within the party, the platform makers, like adroit or tricky politicians, seek to satisfy both sides and offend neither, consequently the platform may be evasive, ambiguous, or two-faced, looking both ways. The platform is the pledge of the party to the people and it should be made, not merely to catch votes, not merely to *get in on*, but to *stand on*, and to carry out after the party is in power. The party that is afraid to announce its principles or that violates its pledges hardly deserves to be again intrusted with power and office.

The Candidate

The last important business before the convention is the nomination of the candidates. The roll of the States is called, and each State delegation has an opportunity to place a name before the convention, or to second a nomination already made. When all the names of the various candidates have been brought forward and the eloquent nominating speeches are ended, the balloting begins, and it continues until some candidate has obtained a sufficient number of votes to nominate him, though the convention may have to adjourn or take a recess several times before a nomination can be accomplished. The leading candidates are called "favorites"; those put forward by particular States without much general support are "favorite sons"; and if none of these can muster enough votes to be nominated, a "dark horse" may be brought in, that is, a man who has not been at all prominently mentioned or whose name has not before been before the convention. Polk was the first "dark horse" in our politics (1844), and Pierce and Garfield are other instances.

In the balloting two rules should be noticed that mark two notable differences between the Republican and Democratic conventions, namely, the *Two-thirds' Rule* and the *Unit Rule*. These rules are used by the Democrats but not by the Republicans.

The Two-thirds' Rule and the Unit Rule

The *Two-thirds' Rule* is a rule that provides that no

candidates for President or Vice President shall be declared nominated unless he shall have received at least two thirds of all the votes cast. Thus in a Republican convention of 1076 delegates, 539 votes, a bare majority, will be enough to nominate, but in a Democratic convention which has 1092 delegates it requires 728 votes to nominate.

There is now much opposition to the Two-thirds' Rule, as being contrary to the fundamental principle of democracy, that is, majority rule. It is objected to as opening the way by which shrewd political bosses and managers may, by intrigue, combinations, and corrupt practices, defeat a popular candidate and thwart the popular will. The Two-thirds' Rule, however, is sustained by precedent; the party managers are used to it; and there is such a relation between it and the Unit Rule that it is difficult to bring about its abolition.

The Unit Rule is a rule which allows the majority of a State delegation to cast the entire vote for the State. Under it the State delegation must vote as a unit for the man or measure the majority favors, if the State convention that appointed the delegates has instructed them to do so. To illustrate: New York has 90 votes in the convention. If 46 of these favor one candidate and 44 another, all of the 90 votes are counted for the candidate favored by the majority. The whole vote goes as the majority may decide.

If the State convention has not instructed the delegates to vote as a unit, the convention will recognize the right of each delegate to cast his individual vote as he pleases. It is held that the State should be supreme and have the right to determine how its will shall be expressed, — in harmony with the well-known Democratic doctrine of States' rights.

The Unit Rule is also applied in adopting the platform and on other important questions, as well as in nominating the candidate. By using the Unit Rule the majority of the delegates in ten or twelve of the largest States could come very near to controlling the convention, though many of their own

delegates from those States were opposed to the candidate and policy favored by their majority. The majority from these large States (being allowed to cast not only their own votes, but also the votes of the minority opposing them) would not need much help from other States to nominate their candidate. It is, therefore, thought best to retain the *Two-thirds' Rule* in order to prevent a nomination from being made by an actual minority of the convention by shrewd management and by the control of State conventions under the Unit Rule.[1]

The Nomination of the Vice President

After the President is nominated the exciting part of the contest is ended. Interest in the convention seems to collapse. Little attention is given to the nomination for Vice President. The triumphant faction of the party may bring about the nomination of a leader of the defeated faction, to conciliate and win its support. Geographical considerations will have weight. If the presidential nomination has gone to the east a man from another section will likely be put on the ticket for Vice President. The nomination may have been bargained away to a State for the support of that State's delegation in the contest for the presidency. It may be the nomination will be hurried or accidental and a man may be named of whom most of the voters of the party have never heard. Several Presidents have died in office and no man should be nominated for Vice President who is not worthy of being made President, and he should represent the majority of the party, in order that the policy favored by the majority shall not be reversed if the Vice President should come into the Presidency.

The Campaign

The "campaign" is the contest between the parties for success at the polls. It occupies the period from the nominations to the election, from July to November. Each party

[1] Study the table of the Electoral College, Appendix, and see if you can work out a *minority* nomination by a combination of large States working under the unit rule, supposing a maximum minority of the large State delegations to be opposed to the choice of the majority.

The Campaign Committees

has its campaign committee (a sub-committee of the National Committee), whose chairman stands in close relation to the presidential candidate and acts as his manager. A special committee appointed by the convention "notifies" the candidates, both for President and Vice President, of their nomination, who reply in speeches and, later, in "letters of acceptance," further defining the issues of the campaign and setting forth their best arguments for their party cause. A large public meeting, or rally, is gotten up for the "notification speech," of the presidential candidate and this may be regarded as the "opening gun" of the campaign. "Party headquarters" are opened in New York, Chicago, and other centers, with managers in charge, directing a force of mailing clerks and stenographers, and making arrangements for sending out speakers and all kinds of party literature, printed in every language known among the voters. All the State committees are active and they send instructions to the county committees, stirring them to action.

Campaign Literature and Speakers

A "campaign textbook" is issued. It contains the platform of the party, the candidates' acceptance speeches, pictures and short biographies of the candidates, certain speeches of the party leaders in Congress, and facts and figures calculated to support the party claims. From the "campaign textbook" the "spell-binders" and the "cart-tail orators" draw their arguments and speeches. These are the speakers who go out into the city wards and county districts to make "stump speeches" for the party.

All kinds of party clubs are organized, first voters' clubs, marching clubs, German clubs, Irish clubs, Polish clubs, business men's clubs, and every race and occupation are called upon to organize and work in behalf of the party. Badges, buttons, and banners are distributed; placards and posters are stuck up in public places; bands, barbecues, and rallies are used to arouse the voters. In the close States every voter is listed (and labeled with his party preference if

it can be learned) in the poll-books of the party committees, in an effort to ascertain, if possible, how each State is likely to vote. This is called taking a party *poll*, which is done two or three times in a campaign. All this means an immense amount of work and the expenditure of large amounts of money. The aim of the campaign committee in all this work is to unite the party and heal all the breaches, to recruit new voters, to arouse the party adherents to enthusiasm, and to educate the voters on the party issues and policies.

Campaign Funds

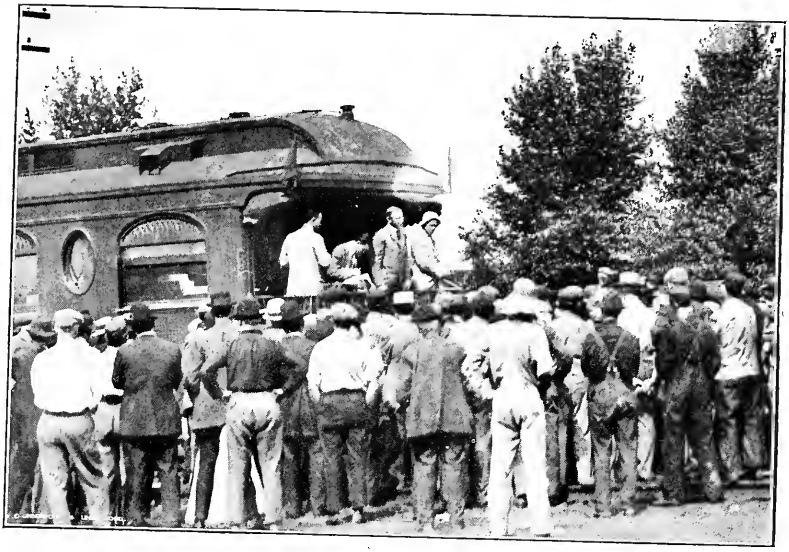
To pay for this work campaign funds must be raised. The workers must be paid for their time and labor, though much of the work is voluntary from loyalty to the party, while the State and local candidates do a great deal. The candidates for President and Vice President make a tour of the country, going by special train and striving to reach all sections, making many speeches a day. The legitimate expenses are heavy, — for trains, hall rent, music, fireworks, posters, pictures of the candidates, cartoons; for campaign agents, paying the party speakers their traveling expenses, and those of the party committee men; for plate reading matter for the country newspapers; employing challengers at the polls and the poll-takers during the campaign; for carriages to bring up the disabled voters; charges for postage, telegraph, telephone and expressage, — all these are legitimate campaign expenses, though at times party managers may "employ" men to work merely as an indirect way of buying their votes. But much of the money is also used corruptly in ways the people would not countenance if they knew of it.

There are several sources from which these campaign funds are derived:

Sources of Campaign Funds

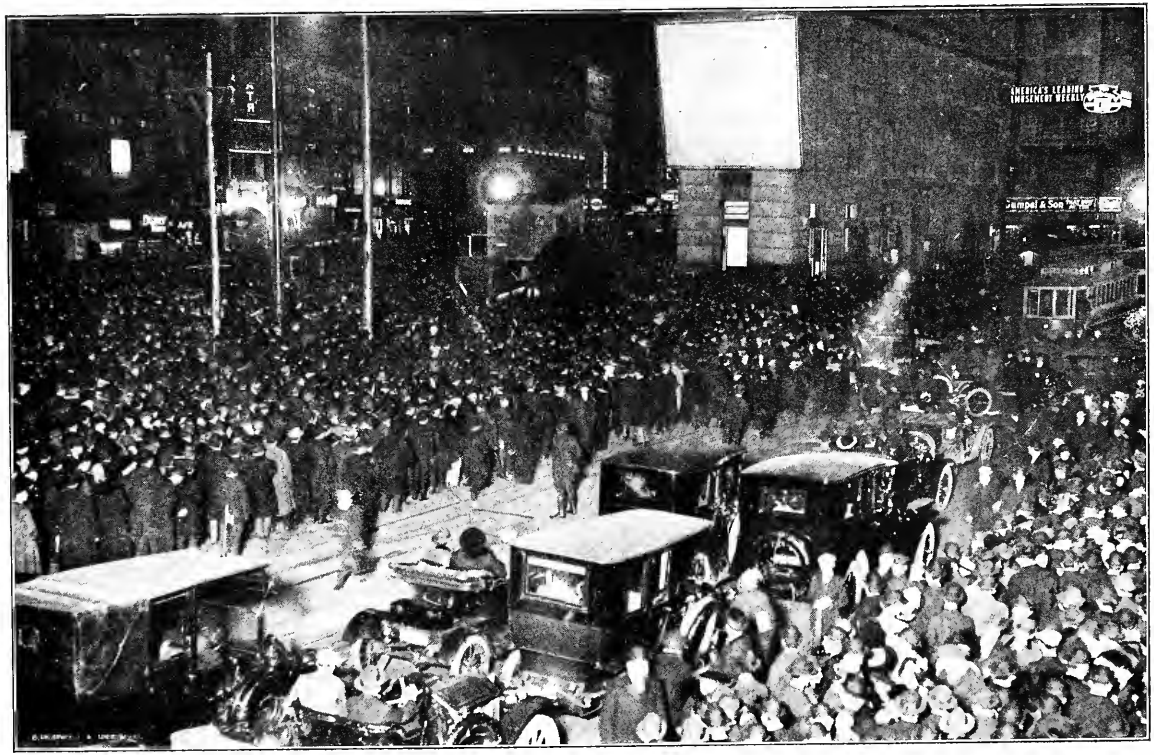
1. Voluntary contributions by members of the party.

2. Assessments upon the party candidates. Party committees expect each candidate to pay somewhat in proportion to the salary of the office for which he is running, — a questionable practice which public sentiment is now tending to check.



PRESIDENTIAL CAMPAIGNING IN THE WEST

A POLITICAL PARADE



Crowd in Longacre Square, New York City, Reading the Election Returns

3. Assessments upon office-holders, laid by the managers of the party in power. This is in violation of the law and the civil service regulations of the Federal Government and can be practiced only lawlessly and secretly.

4. Private contributions by rich men and corporations, who are interested in securing certain laws and policies enacted by the successful party. Corporations have been known to give generously to both party funds so as to "stand in well" and get what they want, whichever party is successful. Large campaign funds coming from hidden sources have led to serious corruption in the elections. The result has been that public sentiment has been aroused to demand *publicity of campaign contributions*, in order that the people may know where the money comes from and how it is spent, and Congress has forbidden corporations to contribute at all. In 1906 a law was passed in New York requiring political committees to file detailed statements of receipts and expenditures and providing for judicial investigation to enforce correct statements.

It has been estimated that the total cost of a presidential election to both parties, including State and local contests, is at least $15,000,000. Publicity will do much to remedy many of the evils connected with campaign practices and the use of money to control the elections.[1]

The Congressional Campaign Committee

The Congressional Campaign Committee does a special work. This committee is entirely separate from the National Committee. It is appointed by the party members of Congress, and consists, generally, of a member of Congress from each State. It has for its special purpose the election of the party candidates for Congress, while the national and State committees are trying to elect the president and State tickets.

[1] See *The Dollars behind the Ballots, World To-day*, Vol. xv, p. 946 (1908); Woodburn's *Political Parties and Party Problems*, Chap. XIX, on "Party Finance," and the pamphlets of the National Popular Government League on "Effective Publicity and Corrupt Practices Arts."

The Congressional Committee makes special efforts in the close districts, sending out speakers and literature in an effort to elect a majority of the members of Congress.

The Congressional Committee had its origin in 1866, when Congress and the President were at odds with one another. The chairman of the regular Republican National Committee and others of the organization were supporters of the "Presidential" party. The "Congressional" party organized a committee of Republican Congressmen who were charged with the task of carrying the election in a majority of the Congressional districts. They won more than two thirds of the Congressional seats. Since then both parties have maintained active Congressional Campaign Committees.

The Election

The campaign continues to the eve of the election, which is held on the first Tuesday after the first Monday in November. The voters vote, not for the President and Vice President directly — the names of these candidates need not be upon the ticket — but for a set of electors equal in number to the State's Senators and Representatives in Congress. These electors have been previously nominated for each party by State and district conventions. The election in November is the *real* election, for the electors chosen that day will vote for their party candidates. This they do when they meet as an Electoral College on the second Monday in January (see p. 238). A result of the electoral vote for each State is sent to Washington, both by messenger and by mail, and on the second Wednesday in February the two houses of Congress meet together to count the votes and declare the result. On the 4th of March the President-elect is inaugurated.

TOPICS AND QUERIES

1. Since a "machine" is necessary to parties why has the term fallen into disrepute?
2. How can the "rank and file" of a party control the party against the efforts of the "machine"?

3. Debate: "Resolved that the convention system ought to be abandoned and nominations made by party primaries."
4. Would it be better to retain the convention and elect delegates by a primary vote?
5. How should a voter decide which party he should support? Why do so many young voters vote as their fathers voted? Why should they not do so?
6. In considering the support of a party, which is the more important, the platform or the candidate? Why? Are principles more important than men?
7. Debate: "Resolved that more harm than good comes from a Presidential Campaign."
8. Is the Republican national convention more democratic than the Democratic national convention? Account for the difference.

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CHAPTER XIII

THE PRESIDENT

Three Departments of Government

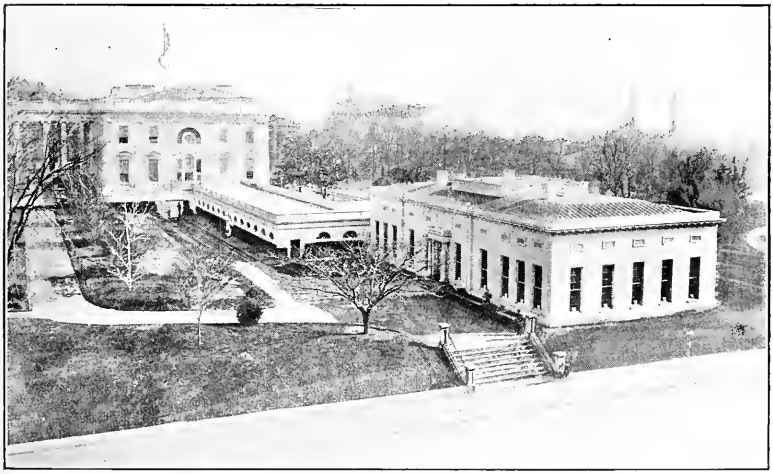
The office of President was created by the Constitution of 1787. One of the well-known defects of the Articles of Confederation was that they did not provide for a suitable executive power to see to the enforcement of laws. The Convention of 1787 determined to make the new government consist of three distinct divisions, or branches, the *legislative* to make the laws, the *judicial* to judge or apply the laws, and the *executive* to execute the laws. The President is the head of the Executive branch, that is, he is the Chief Executive, whose business it is to carry out and administer the laws and public policies that the people may decide upon.

Relation of President to Congress: Theory of Separated Powers

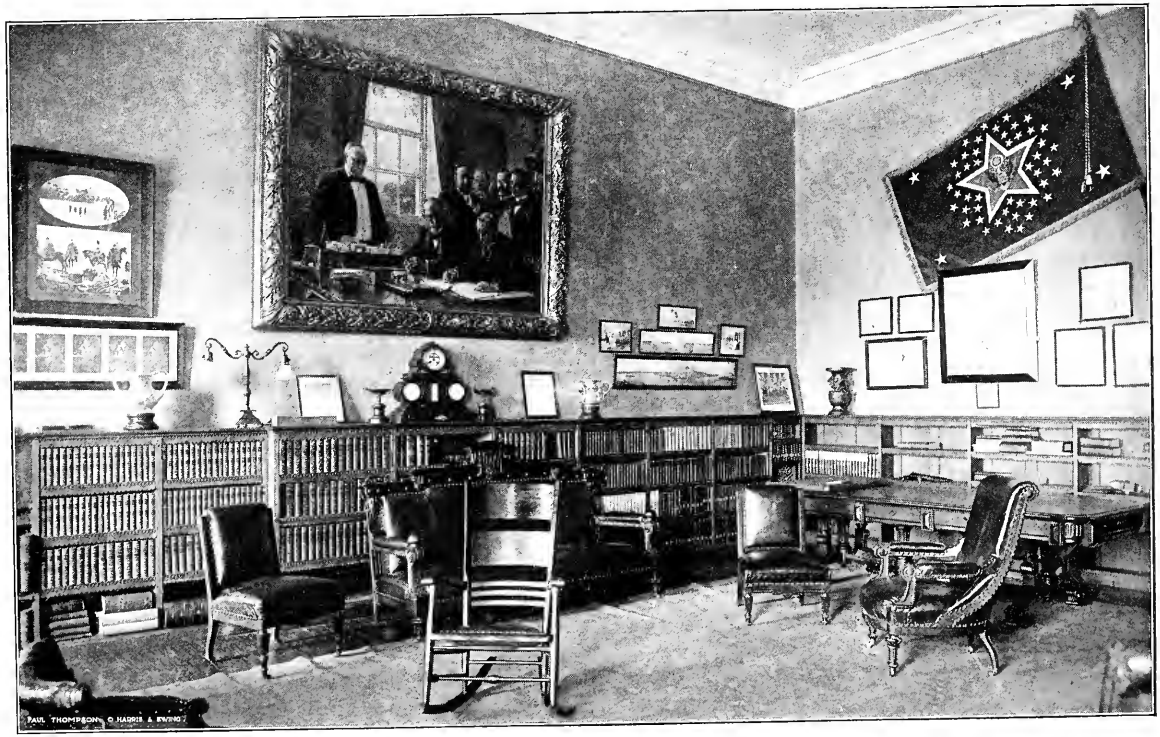
Growth and Change in the President's Powers

It was expected in the beginning that the President was to be merely the executive agent of Congress. He was to be independent of Congress, in a sense; that is, Congress was not empowered to elect him, as the Prime Minister may be elected and dismissed by the Commons in England. And it was expected and designed that the laws and public policies of the country should be determined upon in Congress without any interference from the President or without activity or influence on his part in attempting to lead or direct Congress as to what course should be taken. The President might suggest legislation to Congress in his messages to that body, or if he did not approve of bills passed by Congress he might exercise his veto, but beyond that he was not to control its action. Each department of the government was to be independent of the other, each had its separate duties and

THE WHITE HOUSE, WASHINGTON, D. C.
Front view, showing the original building.



THE EXECUTIVE OFFICES, ADJOINING THE WHITE HOUSE
This was added during President Roosevelt's administration.



A Corner of the President's Study in the White House

sphere of action, — the Legislature was to attend to making the laws, the Executive to enforcing them.

This theory of the "separation of the powers" of government seemed to the makers of the constitution to be vital and fundamental. Madison held the principle to be "essential to liberty," and our fathers wished, above all things, to provide for this in the new government which they were setting up.

The Separation of Powers not Workable

In actual practice, as shown by our history, this idea of the "separation of the powers" has not been found to be workable. The President has come to be looked upon as the representative of the people as much as are the members of Congress. Jefferson, a democratic leader, brought his party into power with a view to guiding the government in changing the policy of the country, and it was Jefferson (with the people behind him) who really determined what Congress should do. It was the same way under Jackson, who was called "the tribune of the people." His control was decisive; he was expected to lead Congress or to fight it, which he did effectively. The same thing was true, by different methods, under Washington and under Lincoln, Cleveland, Roosevelt, and Wilson. It has been only at unimportant times and under weaker Presidents that the "separation of powers" has had full weight in government policy and control.

Two Views of the President's Powers

There is a difference of view as to the scope of the President's powers. One view is that he may do anything which the Constitution does not forbid. This would greatly enlarge his powers. Another view teaches that he may exercise no power which the Constitution does not specifically authorize. This view would greatly limit his powers. The latter is, perhaps, the more legal view, but it is less effective in enabling the presidential office to assume leadership and to accomplish things.[1]

[1] These two views of the presidential powers have been represented in recent years, to a large degree, the first by President Roosevelt, the second by President Taft.

The President is the national leader. The President and the party leaders in Congress should coöperate and work together. Government at Washington must be by "team work," as President Wilson expressed it. There must be leadership, and the President is the official party leader. He will take counsel of many party chieftains and have respect for their views, and then, when he has determined upon a policy, his party in Congress should follow his leadership and support his measures. If they cannot do so and a break occurs between the President and his party majority in Congress, it means a division or a split in the party, and all chance for a harmonious policy is lost until a new Congress or a new President is elected. The party in power is generally thought of as the party in control of the presidency, but the President is not "in power" unless he can lead or control Congress. When Congress and the President are "at outs" it would seem to be better if the people could "discharge" one of them and bring the two departments of the government into harmony so that some policy may be carried out without waiting until a term of office expires.

President and Congress should act together

Term and Qualifications of the President

Term of the President

Our Constitution fixes the President's term of service at four years. As far as the letter of the Constitution goes he may be reëlected for as many terms as the people see fit to choose him. Ten of the Presidents have been elected for two terms, but so far no President has been elected for a third term, and it is now held by some that custom has fixed it as a "law of the unwritten constitution" that no one shall be President for three terms.

It was proposed in the convention of 1787 to make the President's term seven years and not allow him to be reëlected, and for over a hundred years the proposal has been repeatedly made, in Congress and party conventions, that the President should be allowed only one term. Prominent men like

ex-President Taft and Mr. W. J. Bryan urged a constitutional amendment extending the presidential term to six or seven years and not permitting a reëlection. This is urged on the ground that presidential elections are too frequent, that they are too serious a disturbance to "business," that the President ought to have a longer term in order to enable him to carry through a continuous policy, and that if the President were not eligible to a second term he would not be tempted to use the power and patronage of his office to secure a re-election; it is claimed that the President's thought and time are occupied during his first term in considering not how he may make a good President, but how he may secure a second nomination, and that consequently he must do, not what the nation needs, but what the political managers require. However, the people have never been very seriously intent on limiting their power to reëlect their President if they see fit.

Qualifications of the President

The Constitution requires that the President shall be "a natural born citizen of the United States," and shall have been for "fourteen years a resident within the United States," and that he shall "have attained to the age of thirty-five years." The same qualifications hold in the case of the Vice President.

Method of Electing the President

How the Electors are Chosen

It was very difficult for the convention of 1787 to agree upon a plan of electing the President. Various plans were proposed, but the convention finally decided to refer the choice of the President to a body of "electors" to be chosen in each State in such manner as the legislature of the State might direct, each State to have as many electors as it has senators and representatives in Congress.

In early days they were, in some States, elected by the legislatures, in some by the people in congressional districts, in some by the people in the State at large. Now they are elected in each State on a common ticket, all candidates for

electors on each party ticket in each State being voted for directly by the voters, generally under manhood suffrage.[1] Congress has fixed upon the first Tuesday after the first Monday in November every fourth year as the time for choosing the electors in the various states. The election held on this day is popularly called the presidential election, as it is in effect. The voter, when he casts his ballot, is in reality voting directly for the presidential candidate whose name is placed at the top of the ticket, and only incidentally does he vote for electors. The results are usually known by the following day.

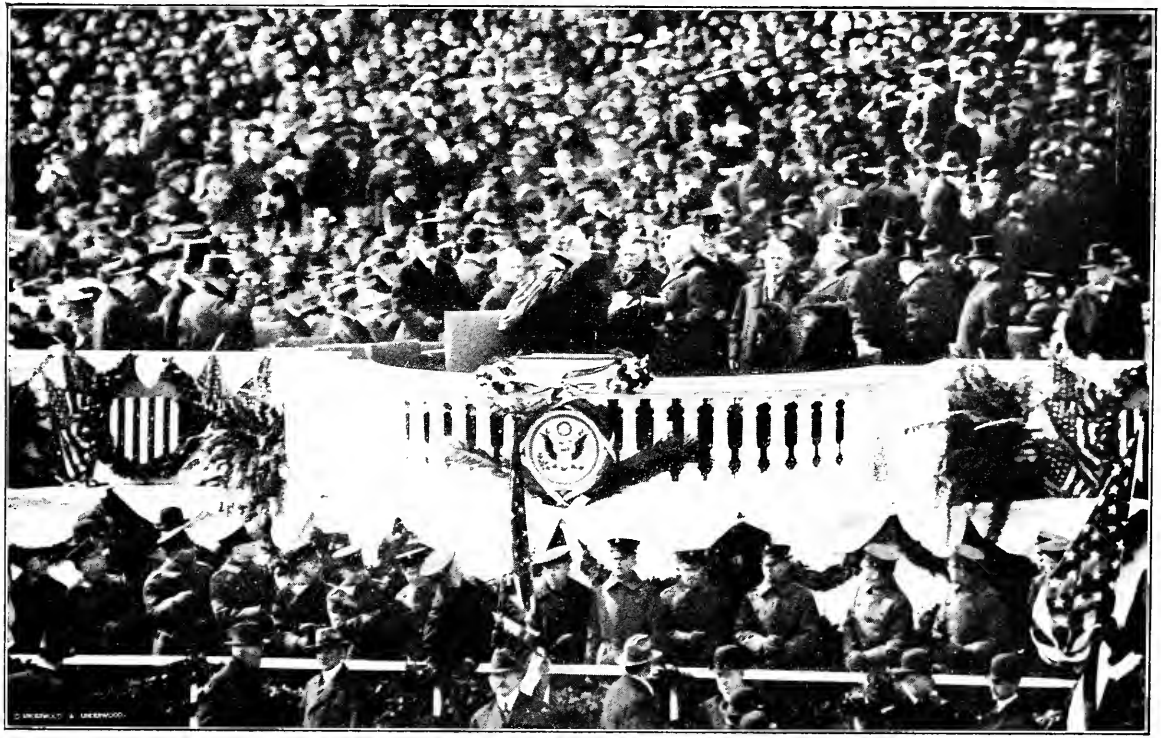
The Electoral College

The electors from all the States make up the *Electoral College*. The electors do not all meet together to vote for the President but meet in their respective State capitals on the second Monday in January following a presidential election and vote for President and Vice President separately. Three certificates of the result of the vote are then prepared, giving the names of all persons voted for as President and Vice President, respectively, and the number of votes for each. One of these certificates is deposited with the United States District Court, a second mailed to the President of the Senate, and a third is sent to him by a special messenger (generally one of the electors). On the second Wednesday in February the Senate and House meet in joint session, the President of the Senate opens the certificates and the count is begun.

The election is virtually by states, as each state casts the whole number of its electoral votes for the candidate having the majority in the state. The candidates for President and Vice President having the vote of a majority of all the electors are declared elected. Except in the case of disputed returns the count is a mere form, since the result is ordinarily known three months before.

In case no candidate has a majority of all electoral votes

[1] For suffrage qualifications, see p. 10.



President Wilson Taking the Oath as President on the Steps of the Capitol

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS public interests require that the Congress of the United States should be convened in extra session at twelve o'clock, noon, on the second day of April, 1917, to receive a communication concerning grave matters of national policy which should be taken immediately under consideration;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the second day of April, 1917, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

Given under my hand and the seal of the United States of America the twenty-first day of March in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States the one hundred and forty-first.

Woodrow Wilson

By the President:

Robert Lansing

Secretary of State.

A Presidential Proclamation

cast for President, the House of Representatives, voting by states, chooses a President from the three presidential candidates who have the largest number of electoral votes. If no one is elected Vice President, the Senate selects for that office one of the two vice presidential candidates who stood highest.

The inauguration of the President and Vice President occurs on the fourth of March following the election.

Advantages and Disadvantages of the Present Electoral System

It was expected that these electors, composed of picked men wiser than the people, would know the qualities of public men and what kind of a man was required for the Presidency. The idea was that the electors meeting in their respective capitals would there deliberate and after discussing the relative merits of candidates they would then exercise their best judgments and cast their votes for the man they deemed best fitted for the office. We know now that this is not the way the electoral system works. So again the Constitution is one thing written but another thing unwritten; that is, in theory it is one thing, in custom or actual practice, another.

How the Electoral Scheme has broken down

The written plan soon broke down when men, organized in parties, attempted to work it. As soon as parties were organized and began to put out candidates for the presidency, the electors were no longer independent and free to vote for whom they pleased, but they were chosen under a pledge of honor to vote for a particular party candidate. They have become mere party agents without any discretion or choice as to what they shall do. When they meet to vote the people have already chosen the President and everybody knows who is elected. Little or no attention is paid to the voting of the electors. They must vote as they are elected and pledged to vote, and it is understood that they will, as a matter of course, merely ratify the election already made.

Under the present plan each State gives all its Presidential electors to that party which wins the popular election in the State, no matter how small the majority may be. When a State elects its members of Congress it seldom happens that one party carries all the districts. The vote of the State in Congress is divided between Republicans and Democrats. If electors were elected by the district plan, one for each district and the two senatorial electors for the State at large, the electoral vote of the State would nearly always be divided. The electoral vote would then more nearly represent the popular vote.

The present plan of voting preserves the solidarity of the State and makes it count more in the contest. By enabling it to throw its whole weight into one side of the scale the importance of the State is emphasized. The plan is not so democratic but more *federal* providing for election by States, which is in harmony with the original federal idea that the States should be the agencies for electing the President, though partly on a proportional basis.

But experience has shown that this plan concentrates the political struggle in the doubtful States and especially in the large doubtful States, like New York and Indiana, while in other States where either party has a safe majority the presidential campaign is listless and lifeless and without interest. The consequence is that the voters in important doubtful States have been subjected to much political corruption. If some proportional plan were adopted by which the electoral vote of a State were divided between the parties in proportion to the popular vote cast for each, then every vote would count in every State, and the Republicans would try harder in Texas in the hope of obtaining at least a few electoral votes, while the Democrats for the same reason would try harder in Iowa or Michigan.

Another objection to the present electoral system is that the party managers merely maneuver to carry enough States to

give them a majority of the electoral vote, while the popular vote in the whole country may be against them. It is not a democratic system. It has repeatedly occurred that a party candidate has received a majority of the electoral votes while the majority of the people have voted against him. In 1860 Lincoln had only about 40 per cent of the popular vote; in 1876 Tilden had a popular plurality over Hayes, though Hayes was elected, while in 1888 Cleveland had 98,000 popular plurality over Harrison but Harrison got sixty-five more votes than Cleveland in the Electoral College.

Should the Electoral College be abolished?

It has been urged that the Electoral College should be abolished and a more popular democratic plan should be adopted for electing the President. It has been proposed that he should be elected by a direct popular vote of the whole country, just as the senators and representatives are now elected in the States. This would be a very *nationalizing* change, the people becoming a consolidated mass for the purpose of electing the President regardless of State lines.

The district plan might be resorted to if it were not for the danger that party managers would be still further tempted to "gerrymander" the congressional districts.[1]

Powers and Duties of the President

There are several powers and duties assigned to the President:

Classification of Presidential Powers

1. *Purely Executive.* These include his power and duty to "take care that all laws be faithfully executed," to appoint subordinate executive officers for this purpose, and to see that the executive departments are efficiently administered. These are his general executive powers.

[1] See p. 273. Also President Harrison's message of December, 1892, Richardson's *President's Messages*, Vol. IX, p. 208. On the subject of Proportional Representation see Professor J. R. Commons' book on that subject. Also John G. Carlisle in the *Forum* No. 24, p. 651, on "Remedy for Dangerous Defects in the Election of the President," and "Our Bungling Electoral System," by J. C. Allen in *American Political Science Quarterly*, November, 1917.

2. *Diplomatic.* Under this head come the President's powers (1) to make treaties with the advice and consent of the senate and (2) to appoint ambassadors and consuls to foreign countries and to receive similar representatives from abroad. The President and his Secretary of State are held responsible for the conduct of foreign relations and the diplomacy of the country. In receiving a foreign ambassador at the White House[1] the President recognizes the ambassador as well as his country, the ambassador coming as the official spokesman of that country. The countries communicate through their ministers. The President may refuse to receive a minister, and this he will do if he does not wish to recognize the independence of the country concerned or the government which claims to be established there. He may also (by his Secretary of State) ask a foreign government to recall its minister or he may dismiss a minister for speech or conduct offensive to our government.

3. *Advisory.* The President may *recommend* measures to Congress and inform that body on the "state of the Union" or on any public need. This he does by his regular annual messages to Congress, and by such special messages as he may see fit to send in from time to time. These messages are also intended as a means of informing and persuading the nation. The President's messages are printed and circulated freely.

4. *Legislative.* The President is a part of the law-making power. The treaties which he helps to make are the "supreme law of the land." He can convene Congress in extraordinary session, and by the veto power he may prevent legislation by less than two-thirds majority in each house of Congress. This gives to the President a very great negative power in preventing legislation.

5. *Military.* The President is the commander-in-chief of the army and navy and of the militia of the several States when called into the service of the United States. The Presi-

[1] The ambassador is introduced by our Secretary of State.

dent is authorized by law[1] to call forth the militia of the State in order to suppress insurrection or repel invasion and the President is to be the judge as to when the emergency exists. The nation through the President controls the State militia, though the States may train the militia and appoint its officers.

6. *Judicial.* The President may not be said to exercise judicial power, but he exercises power over the Judiciary. His ideas and purposes count for a good deal in our national judicial system. He has the power to appoint the Judges of the Supreme Court and of the inferior Federal courts, and in this way he may exercise a great deal of influence over the *tendency* of judicial decisions.

By studying these six classes of powers it will be seen that many of the President's acts will fall into more than one of the classes named. They cannot be sharply separated or defined. To illustrate, when the President makes a treaty he exercises not only diplomatic power but legislative power, and when he appoints a judge he performs a purely executive act with a judicial bearing. Some of these powers of the President are of such importance as to call for special discussion.

The Veto Power of the President

The President's Power over Legislation

Every bill or resolution of Congress, before it can become a law, must be submitted to the President for his approval. He is given ten days in which to consider it. If he approves the measure he may sign it, or (although disapproving some features of it) he may allow it to become a law after ten days without his signature, as the Constitution provides. A President may be so displeased with a bill as not to wish to put his name to it and yet not be willing to take the responsibility of defeating it by a veto. President Cleveland did this in 1894 with the Wilson-Gorman tariff act. He denounced

[1] Act of February 28, 1795.

as "party perfidy" the changes made in the act by certain senators, and he allowed the measure to become a law without his signature.

If the President disapproves of the measure he may *veto* it or forbid it to become a law by returning the measure to the house in which it originated, giving in writing the reasons for his veto. Congress may then reconsider the bill and if passed by a two-thirds' vote in each house it becomes a law.

If Congress adjourns within ten days after sending a bill to the President (Sundays excepted), he may withhold his signature and kill the bill entirely without giving his reasons to Congress. This is called a *pocket veto*, as the President is said to "put the bill in his pocket" without giving it further public notice. A "pocket veto" is an absolute veto, as Congress has no chance to reconsider and again pass the bill. After a "pocket veto" the only way to enact the measure into a law is to start a new bill in a later session of Congress, which the President may again have a chance to veto.

Early Use of the Veto

The early Presidents used the veto very little. Washington vetoed only two bills, and John Adams, Jefferson, and John Quincy Adams none at all. From Washington to Jackson only seven or eight bills were vetoed. Jackson marked an epoch in the use of the veto. As a rule, the earlier Presidents thought the veto power was given merely to protect the Constitution from violation and to prevent legislative encroachments on the office of President, to safeguard his own powers and independence. The early Presidents acted on this theory, but Jackson used the veto to defeat measures of which he did not approve, regardless of their constitutionality. If a measure appeared to him unwise and inexpedient he thought he should use his veto power to defeat it. As the "tribune of the people" he held that the President should share with Congress the responsibility for legislation.

This use of the veto, together with the removal policy of Jackson (see p. 254), greatly increased the power of the Presi-

dent, and Jackson's opponents, led by Clay and Webster, denounced his "usurpation" and called him "King Andrew." It became a principle of the Whig party to oppose this larger veto power. Clay proposed, in view of what he considered so much and such a dangerous power in the hands of one man, that the Constitution be changed so as to allow a bare majority of Congress to overcome the veto. The Whigs asserted that the will of the people should be uncontrolled by the will of one man.

The Veto increases the President's Power

But Jackson's idea and use of the veto have prevailed under later Presidents of all parties. The President is looked upon as the representative of the people, and they expect him to exercise his independent judgment on every bill, holding him responsible for the bad effect of legislation which he might have prevented. It is considered to be not only the President's right but his duty to veto bills which he thinks are unconstitutional or which he thinks may be inexpedient, or injurious to the welfare of the country. This has made the veto a real power.[1] It does, indeed, put upon the President great responsibility. In preventing legislation it makes him equal in power to thirty-one senators and one hundred and forty-four members of the House.[2] This is one of the powers that tend to magnify the President's office and make him the leader of the people and the head of the nation. He is expected to guide the country and to save it from error and danger, and it should impress the people with the fact that no second rate or unsafe man should be entrusted with the great duties of the President's office.

The Veto a Real Power in America

[1] In England the *theory* of the veto is the same as in America, but the King, to whom this power is given by the letter of the law, never uses it. It is his bounden duty, by unwritten custom, to give his assent to every measure which passes Parliament, no matter how much he may personally disapprove of its provisions. This illustrates how our written constitution tends "to cleave to the letter of the law" while the English unwritten, or flexible, constitution tends "to depart from the letter of the law." See Bryce, *American Commonwealth*, vol. I, p. 60.

[2] One less than a third.

Treaty-making Power

How Treaties are Made

The President has the power, "by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur."[1] This is closely connected with his power to appoint ambassadors and consuls. The President does not, as a rule, conduct the foreign negotiations directly, but he does it through his ambassadors or his Secretary of State, who is his minister for foreign affairs. He may instruct or direct these officers as to what they shall do, or agree to, or he may recall and remove them. A treaty is made under their direction by its being agreed to between the Secretary of State or our ambassador abroad and the representative of the other contracting nation; and then the President, if the terms of the treaty suit him, submits it for the senate's approval. If the senate consents, the treaty becomes the law of the land. If the treaty does not suit the President after it is drawn up, he may refuse to submit it to the senate, as Jefferson did in 1806 in the case of the Monroe-Pinkney treaty.

The senate's "advice and consent" is not limited merely to saying Yes or No to a treaty after it is completed. The senate may advise the President to begin a treaty, or it may modify or amend a treaty while it is pending before that body. The initiative, however, in treaty-making generally rests with the President, and he is not bound to take the senate into his confidence during the process of a negotiation, though he may ask the advice of the senate while the treaty is in the making. So the senate may be said to be almost coördinate with the President in treaty-making.

[1] "Two thirds of the Senators present" may be a minority of the whole Senate; it may be only two-thirds of the quorum, a quorum being a majority of the whole Senate. It appears that if only a bare quorum of the Senate were present the votes of thirty-four Senators might confirm a treaty, or the votes of eighteen Senators might reject one.

This important power in treaty-making was given to the Senate because when the Constitution was made the States were particularly interested in foreign relations and they looked upon the government of the United States at the time as being chiefly a government for foreign affairs. The Senate was the body in which the States were especially represented, and the States, as such, did not wish to allow our foreign relations to pass beyond their control.

In our relations with foreign countries it is desirable that the nation should be united, if possible, regardless of party. Since the senate can block negotiations while they are in progress or defeat a treaty after it is made, the President will naturally desire the favor and coöperation of the senatorial majority and especially of the senate's committee on foreign relations, whose chairman is always an important factor in the conduct of our foreign relations. The President will, while conducting important negotiations, seek to know the mind of the senate and to act in harmony with the leaders of both political parties, especially in times of a foreign crisis. The leaders and members of the opposition party are generally ready to support the President on an issue between a foreign country and our own. [1]

The Powers of the House in Treaty-making

The House is not considered to have a part of the treaty-making power. When a treaty is made the House is expected to provide for carrying it out. But if money is required or if the treaty involves a public policy to which the House is opposed or which is confided by the constitution to the whole body of Congress, the House has always asserted its right to defeat a treaty by refusing the money necessary to make it effective. Thus, when an act of legislation is necessary to carry out a treaty, the House does not regard the refusal to pass such an

[1] There is a familiar maxim, offered as a toast by Commodore Decatur in 1816, "Our country, in her intercourse with foreign nations may she ever be right, but our country, right or wrong." This may be debatable from a moral point of view. It has been changed to, "My country, if she is right may we keep her right, if wrong, may we set her right."

act as a violation of the treaty, but it contends that as a co-ordinate branch of Congress it is competent to decide whether it will allow the treaty to fail or to be operative, and that it may thus prevent "the absorption of legislative powers by the treaty-making organ." The House contention is that the President and senate shall not be allowed by treaty-made law to leave the House out in regulating commerce or in doing other things by mere treaty-law in matters in which the powers of the House are by the Constitution made equal to those of the senate. [1]

The War Powers of the President

The President's Power to bring on a War

The war powers of the President come to him from the fact that he is commander in chief of the Army and Navy of the United States and because he is charged with the faithful execution of the laws. The President may not declare war; that power belongs to Congress. But in times of crisis with a foreign country he may so act as to force Congress into war. President Polk in 1846 ordered General Taylor to occupy disputed territory. This brought on war and Congress merely recognized that war existed "by the act of the Republic of Mexico." When war comes the President, as commander in chief, must have the right to exercise all the powers recognized by the laws and usages of war. War is *executive* business. It requires quick decision, energetic action, unity of responsibility and control. It cannot be carried on by a congress, or council, prone to disagreement, argument, and debate.

In war the President falls but little short of being a dictator. No man has yet defined his war powers or placed a limit on them. It has been said that in our Civil War President Lincoln exercised more personal power than any English-

[1] This subject was discussed fully in connection with Jay's treaty and the Alaska treaty. See Woodburn's *American Republic*, pp. 159–164. See Edwin S. Corwin's "The President's Control of Foreign Relations" (Princeton Press).

speaking ruler since Oliver Cromwell. When military law succeeds civil law the President becomes absolute. He is restrained only by the laws and usages of civilized warfare. In 1861, without waiting for Congress to meet, President Lincoln called for 75,000 volunteers, proclaimed a blockade of the Southern ports, increased the size of the regular army, suspended the writ of *habaes corpus* in spite of the protest of Chief Justice Taney (see p. 251), and later in the war he appointed and removed generals, directed the movements of fleets and armies, executed or pardoned criminals, arrested and imprisoned men without trial, and, finally, exercised the great power (which existed only in war) of declaring free by his famous emancipation proclamation all the slaves in the insurrectionary States. These acts, even if not afterwards recognized as lawful by Congress or the courts, were effective just the same.

The War Powers of the President

Congress either confides extraordinary war powers to the President beforehand or confirms such powers after their exercise. In the World War President Wilson was given power to control transportation and foreign trade; to determine the price of food and fuel and other necessaries; to decide what grain, if any, might be distilled into liquors; to fix the price of steel and iron and iron ore, and of supplies and munitions bought in America for our Allies; to commandeer mines and railways, ships and shipyards, and to regulate the method of production, sale, shipment, apportionment and storage of all products necessary for the conduct of the war and the life of the people. This vast war power in the hands of one man may be a dangerous thing. All power may be abused if placed in unworthy hands. The only safeguard of the nation in such a crisis is the character of the man who fills the presidential office. Fortunate for America that, when the necessity has come, these war powers have fallen into the hands of patriot Presidents who have been devoted to liberty, democracy, and the rights and interests of the people.

Our Presidents have been the products of American life and principles. If a Napoleon instead of a Lincoln had been President at the close of the Civil War, in absolute control of more than a million armed men, there might have been usurpation and tyranny, but as it was, under a wise and liberty-loving ruler, the vast army was not misused to promote the ambition and power of a personal ruler. The laws were respected and the citizen-soldiers were soon again engaged in the vocations of peace. Our small standing army of about 25,000 men resumed its usual function of keeping a few military posts and guarding the frontier.

Power to Suspend the Writ of Habeas Corpus

An innocent person may be charged with crime and may be arrested and imprisoned. The writ of *habeas corpus* (you may have the body) is the means by which he obtains release from such illegal arrest and imprisonment. He applies through his agent or attorney to the judge of a court, who issues an order, or writ, ordering the sheriff or constable who has the prisoner in charge to bring him into court in order that it may be ascertained whether there is good reason for keeping him in prison. If it appears that the prisoner has not been guilty of violating the law, the judge orders his release. In this way justice is not denied or delayed. To *suspend the writ* is to deny to an imprisoned citizen the right, or privilege, of having the charges against him examined into, and it might permit those in office to exercise arbitrary and despotic power and to practice injustice and oppression.

The privilege of the writ of *habeas corpus* is a "guarantee of personal liberty as old as Magna Charta" (1215). The Constitution says this privilege "shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." This leaves unsettled the question whether the power of suspending the writ is to be exercised by the President or by Congress. In England it was always held to be a Parlia-

Whose Function is it to suspend the Writ?

mentary power, not a royal power. Jefferson refused to exercise it and referred the matter to Congress when occasion arose in the case of the Burr conspiracy.

The clause referring to the power is in that part of the Constitution (Article 1, Section 9) which deals with the legislative and not with the executive powers. This seems to indicate that the framers of the Constitution intended that Congress and not the President should decide the matter; and in 1861, when President Lincoln had suspended the writ in the case of a political prisoner confined in Fort McHenry, in Baltimore, Chief Justice Taney decided that the power did not belong to the President. The Chief Justice issued a writ ordering the constable to bring the body of the prisoner (Merryman) into his court, — so that the Justice might inquire into the lawfulness of his detention, but Gen. Cadwalader, in command at Fort McHenry, refused to respect the writ, saying that he was acting under the orders of the President. The order, or attachment, of the Justice could not be executed by a constable or sheriff with a *posse comitatus*[1] against the superior military force of the General, and the Chief Justice was powerless to release the prisoner. All that he could do was to write to the President protesting against presidential usurpation and declaring that a military government had been substituted for the government of the Constitution. Chief Justice Taney called upon President Lincoln to respect his oath of office, to observe the constitution and to execute the law. The President refused to respect the law as the chief Justice had expounded it; he acted upon his own judgment and the advice of his Attorney General, and maintained his power.

Conflict between President Lincoln and Chief Justice Taney

So, while judicial opinion has favored Congressional exercise of this power the actual facts of our history in war have

[1] *Posse*, to be able; *comitatus* a country. Hence, the power of the the country; usually those inhabitants summoned by the sheriff to assist in preserving the public peace.

favored the President's use of the power, and it is safe to say that under similar circumstances the President would exercise it again despite judicial opinion. The facts govern rather than the theory. It is a power which from its nature requires quick, decisive action of an executive character. Congress afterwards confirmed President Lincoln's action as a means of removing all doubt as to its legality.[1]

Danger of Military Usurpation

In the hands of an ambitious and unscrupulous man this is a dangerous power and it may lead to usurpation and military autocracy. The privilege of this writ of *habeas corpus* has been one of the great objects of conflict in all the constitutional struggles of the past. To suspend it is to suspend civil liberty and to do away for a time with all civil rights. It may be necessary, for in times of war and insurrection civil procedure is impossible. The courts would become blocked with the cases, and the more drastic summary process of military restraint must be employed to restore order. It is only the stern necessity of self-preservation that can justify the vesting in one man of this supreme power, and it should be understood that in doing so — in abandoning the *habeas corpus* and a civil trial — the nation, as Blackstone expresses it, is merely consenting "to part with its liberty for a while in order to preserve it forever." Only such an end can justify such means.

Power of Appointment and Removal

In time of peace the appointing power probably gives the President more real political influence than any other function conferred upon him. If he is to execute the laws he must be able to select and control the persons by whom this

[1] See the Merryman Case, Thayer's Cases in Constitutional Law, Vol. II, p. 2374. McPherson's *History of the Rebellion*, p. 155. Woodburn's *American Republic*, pp. 179–180. "The Constitution in War Time" by Henry J. Ford in *Atlantic Monthly*, October, 1917. Also an Address before the American Bar Association, by Hon. Charles E. Hughes, former Justice of the Supreme Court, Senate Document 105, (1917).

is to be done. The influence of the senate over appointments is discussed elsewhere (see p. 264). Congress may by law specify certain qualifications for appointees, determine the terms on which they may hold office (their tenure) and provisions for their promotion. The growth of the country and the great increase in governmental functions have led to the existence of a vast army of appointive offices under the Federal Government, and although the merit system and the classified service (see p. 60) have relieved the President of much of the burden and responsibility in appointments, yet so many important appointments are still dependent upon him that he may, if he chooses, exercise a tremendous political power by using these offices for party purposes or in building up a personal or party machine. It was not expected in 1787 that a President would be at all governed by a party motive in making appointments, and Madison said a President would be subject to impeachment if he should act so. But our party history has brought such motives into use and many of the presidential appointments are still determined by political or party considerations rather than by the public need.

The Appointing Power

The power of appointment has carried with it the power of removal. The senate's consent being necessary to appointment, should it not also be necessary to removal? This has been greatly debated at various times in our history. Hamilton and Madison in the *Federalist*[1] differed on the question in 1788, Hamilton insisting that the senate's consent should be deemed essential to any removal by the President. He wanted fixed tenure and strong stable government and he would allow the senate to have a chance to restrain the

The Power of Removal

[1] A collection of essays which are now published under the title of "The Federalist." These essays, eighty-five in number, were designed especially to gain supporters to the new constitution. They were written by Madison, Hamilton, and Jay. Even at this day "The Federalist" remains the greatest commentary upon the constitution ever written

President before changes could be made. Madison insisted that a removal was so clearly an executive act that the President could not fairly be held responsible for executing the laws unless he could control his subordinates and assistants, removing them if necessary, and putting more faithful officers in their places to carry out his orders. His view prevailed.

In 1829 the question again came up, Webster, Calhoun, and Clay objecting to Jackson's wholesale removals in using the offices for party spoils; but Jackson's power was sustained. Again in 1867, when there was a fierce quarrel between Congress and President Johnson, Congress attempted, by the Tenure of Office Act, to restrain the President in his power of removal. The act provided that while the senate was not in session the President might suspend a subordinate and appoint some one else *ad interim*, but when the senate met again the President should give to the senate his reasons for the suspension of the officer. If the senate voted that these reasons were good the suspension was to be deemed valid and the newly appointed officer was to hold the place. But if the senate did not deem the reasons for removal to be good, then the *ad interim* appointment was to fall and the old officer who had been suspended was to be restored to his place.

The Tenure of Office Act

This Tenure of Office Act was never tested in the courts, and if it had been it would likely have been declared unconstitutional. It was for resisting it, chiefly in removing Secretary Stanton, that President Johnson was impeached. After the Congressional party had elected a new President (Grant) and harmony was restored between the two departments of the Government, the greater part of the act was repealed and the last remnants of it were repealed under President Cleveland, who stood up stoutly for his independent prerogative in removals. So it may be said that, both by law and history, the President has a free hand in removals.

Power to Protect the States

The United States is bound by the Constitution to guarantee to each State (*a*) a republican form of government, and (*b*) protection against invasion and domestic violence.[1] This is called the *guarantee clause*, and under it, in certain circumstances, the United States may use its power within a State to preserve order or to settle differences between rival governments. The President's action "against domestic violence" is to occur only when the legislature or the executive of the State asks aid of the national Government.

The Guarantee Clause

The Supreme Court has decided that when Congress admits members of Congress from a State to their seats, the authority of the State government under which they are elected is recognized as "republican" and this decision is binding on other departments of the Government.[2] The Supreme Court has lately refused to interfere by upsetting the Oregon system of government as un-republican. Such interference is a political matter to be decided upon by the political branch of the Government.

In a case of "domestic violence" the legislature of a State, or its Governor (if the legislature is not in session), applies to the President if help is needed, as by the act of February 28, 1795, the duty of fulfilling this guarantee was placed upon the Executive. The President is not bound to wait for an application from a State authority before he intervenes. If a domestic insurrection or riot within a State interrupts the operations of the functions of the United States Government or is causing the violation of United States law, the President may intervene even against the protest of the State authority. The President must decide when the emergency exists. A

[1] Constitution, Article 4, Section 4.

[2] See the famous case of Luther *vs.* Borden, and the account of Dorr's Rebellion in Rhode Island, 1842. Thayer's Cases Decided in 1848, Woodburn's *American Republic*, p. 173.

notable instance of this is seen in President Cleveland's action in the great railway strikes in Chicago in 1894, in which he interfered by sending United States troops to enable Federal authorities to enforce the United States postal laws and the Inter-state Commerce Act.

The President must "take care that the laws be faithfully executed," and the execution of the national law must not be left to depend upon the disposition or capacity of a State or its officers. The States have always been able and willing, as a rule, to enforce the law and preserve order within their borders and to coöperate rather than to obstruct in the enforcement of national law. It was the spirit and purpose of the Constitution to provide for Federal aid only when the State called for it. In 1787 it was deemed dangerous to liberty and to the independence of the States and altogether too nationalistic to confer upon a Federal officer the power to "invade a State" at his own behest, on the plea of enforcing law and preserving order. It is the State's business to quell riots and preserve order and it is still the law of the Constitution that Federal interference shall occur only at the request of the State. But in the rare case of conflict between the two authorities the State must give way, — unless public opinion and the national sentiment should sustain its contention. The principle is that "law and order" must be preserved and that for this purpose "behind the city stands the State and behind the State stands the nation."

TOPICS AND QUERIES

1. Debate: "Resolved that the English ministerial system of government is better than the American presidential system."
2. Why did the Americans not adopt the English system? Would it be possible to adopt it now in any of the States without changing the United States Constitution? Why?
3. Show how the President's powers have grown under our system. Why has this happened? Is the President separate from Congress? Or does he lead Congress? Ought he to be merely an executive to administer the law, or a leader in determining what

laws should be made? What were the intentions of the framers of the Constitution on this point? What policy does President Wilson pursue in this respect? How have the greater number of Presidents acted? Consult current periodicals for articles on the President's office and its powers.

4. Why after every presidential election are proposals made to change the method of electing the President? What better method is proposed? What reasons now exist for a change which did not exist when the Constitution was made?
5. Show how a candidate for President may receive a majority of the popular vote and yet fail of election. Is this right? Why? What advantage, or disadvantage, would result from allowing the popular vote to decide?
6. How few votes in California might have changed the result of the election in 1916? Significance of this.

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Use Hart and McLaughlin's *Cyclopedia of American Government*, on the topics of the chapter.

CHAPTER XIV

THE SENATE

Composition of the Senate: Qualifications of Senators

THE Senate of the United States consists of ninety-six members, two from each of the forty-eight States. A Senator is required (*a*) to be thirty years of age, (*b*) to have been nine years a citizen of the United States, (*c*) to be at the time of his election an inhabitant of that State for which he is chosen. During his term of office no senator can hold any other office under the United States.

Term

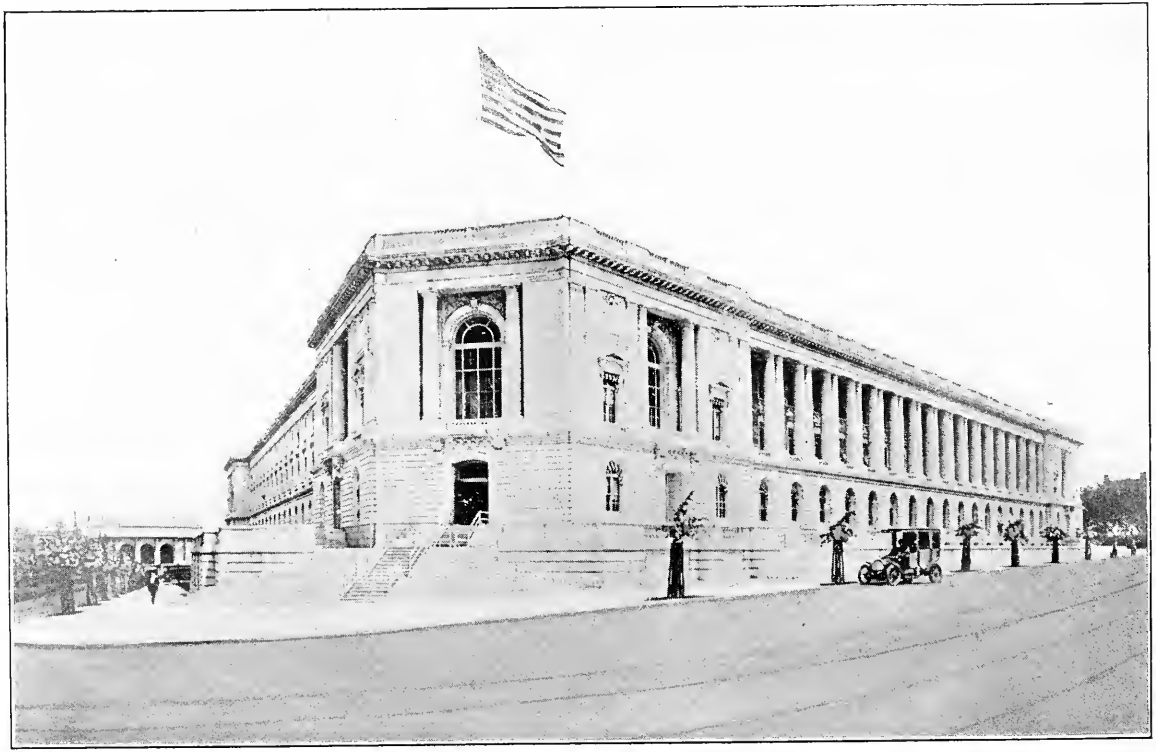
The term of the senator is for six years. Senators may be reëlected for any number of terms and many of the States continue their senators for a long period of years. Many of the present senators have been in the Senate for twenty years and in the past some have served for over thirty years. This makes the Senate an older and more conservative body than the House.

The reëlection of a senator is the rule rather than the exception as long as his party holds political control of his State. It is rather the other way in the House, especially in some parts of the country. If a representative has been elected for six or eight years it is thought "he ought to pass the office around and give others a chance." By changing its delegation frequently a State loses weight and influence in Congress, as it takes a new member some time to learn the ways of the Congress and to come to wield a large influence. This partly accounts for the Senate's wielding a more effective influence on legislation than the House (see p. 269).

Method of Election

Senators are now elected by the people of their respective States by a direct popular vote. They are nominated by their

THE SENATE CHAMBER, CAPITOL BUILDING, WASHINGTON, D. C.



U. S. Senate Office Building, Washington, D. C.

parties either in primaries or in State conventions, just as the candidate for Governor and the other candidates on the State ticket are nominated, the candidate for senator being regarded as the head of the State ticket. The original Constitution provided that the senators should be elected by the State legislatures, and it was not until 1913 that the change was brought about by the Seventeenth Amendment.

The Vice President of the United States is the presiding officer of the Senate. He may vote in case of a tie. He is not a member of the Senate and he may, therefore, claim no vote except to break a tie. The Senate may choose, along with its other officers, a president *pro tempore*, who presides in the absence of the Vice President or if the latter should become President of the United States. The Senate's president *pro tem* is a member of the Senate and he may claim a vote on any question that may arise, but, having voted once, he cannot, of course, vote again even in case of a tie.

The President of the Senate

Character of the Senate as a Legislative Body

When the Senate was first organized its members were divided into three classes: The terms of the first class expired in two years, of the second in four, of the third in six; after that all terms were for six years. By this arrangement (provided for in the Constitution) the Senate was made a *continuous*, or *permanent* body. It also provides that the two senators from a State never come up for reëlection at the same time.[1]

Classes of Senators: Permanent Character of the Senate

In every Congress two thirds of the senators were in the preceding Congress. Not more than one third of the Senate can be changed at any election, and it seldom happens that as many as a third are changed every two years. So while the Senate may undergo an "unceasing process of gradual renewal" and "be always changing, it is forever the same." This adds to the dignity and weight of the Senate in national affairs

[1] Unless a death or resignation should occur.

(see p. 269). It also qualifies the Senate to participate in conducting the foreign affairs of the nation where continuity of policy is needed.

The Federal Character of the Senate

In its origin the Senate was made up with a view to preserving the federal character of our government, — that is, a government by States. In the Constitutional Convention of 1787 there were two parties of opinion, or two dispositions toward the States: one wished to consider them as geographical districts of people, all together making up one political society; the other would preserve the States as so many distinct political societies. The fact was each State was a distinct political society and had been so in colonial times, and very few were willing to merge their States into one mass to become a consolidated continental people. Still the large State leaders insisted that "authority should be derived not from the States but from the people and that equal numbers of people should have an equal number of representatives and different numbers of people different numbers of representatives." [1] The history of the convention of 1787 shows how these two ideas were combined, that "in one branch the people ought to be represented, in the other the States." [2] So the House was made *national* in its representative character while the Senate was made *Federal*, to make it a body representing the States as separate and equal political communities. In the Senate the States are equal, in the sense of having equal rights and equal power.

Undemocratic Character of the Senate

Of course this is quite undemocratic. From a purely democratic point of view it is quite absurd that a population of 100,000 in one state should have as much power as ten million people in another; that little Delaware, hardly larger than two good sized counties, should have equal weight in making the laws with the great State of Pennsylvania. It is as if a single rural county in Illinois were given as much power in

[1] Wilson of Pennsylvania in the Convention.
[2] Dr. Johnson of Connecticut in the Convention.

making laws for that State as the whole city of Chicago. One may think this very unreasonable and unfair, but we must remember that is the way that our Constitution was made. Our fathers did not wish to form a purely democratic consolidated government. They formed, in part, a *federal* government, not a government of the people of the United States *en masse*, but a government of the people in States.

Hamilton set forth five purposes for the creation of the Senate which it may be well to summarize here:

Original Purposes of the Senate

1. To conciliate the spirit of independence in the States by equal representation.

2. To create a council qualified to advise and check the President in appointments and treaties.

3. To restrain the House, guarding against passion and sudden changes in the people.

4. To provide a body of stability, character and continuity in policy, composed of men of larger experience, of longer terms, and more independent of popular election.

5. To establish a court for impeachment.

Powers of the Senate

Three classes of powers are exercised by the Senate: 1. Legislative. 2. Executive. 3. Judicial.

Legislative Powers

As a *legislative* body the Senate is coördinate with the House. Its consent is necessary to the passage of any bill before it can become a law. It has all the legislative power the House has except that it may not originate a revenue bill. This exception amounts to nothing since the Senate may amend a revenue bill (tariff bills, etc.) coming up from the House and thus be just as influential as the House in determining its final form. The Senate has at various times put on from three hundred to eight hundred amendments to tariff bills that have had to *originate* in the House (see p. 297).

Instruction of Senators

In earlier days it was claimed that, acting through its legislature, a State had a right to instruct its senators in Congress how they should vote and that the senators should feel bound to obey these instructions. This was held to be so especially because the legislature elected the senators, and because the senators were looked upon as somewhat in the character of diplomatic representatives to another government who should, of course, be bound by instructions from their "home government." At times during our history instructions have been so given and obeyed. At other times senators have refused to be so bound and there was no way to control their action. Public opinion came to accept the idea of representation that the representative should be left free to vote and act on his own conscience and judgment. A legislature may change its political complexion during a senatorial term and partisan instructions imposed upon a senator of the opposite party would hardly be effective. Now that the legislatures have ceased to elect the senators there is still less reason for exercising instructions and no practicable way of doing it. A State legislature or a party State convention might *request* the senators of the State to vote a certain way, and such a request would not be lightly regarded. But a senator's vote is his own to be cast according to his own good sense and conscience. As a matter of course he will always be influenced in casting it by the public sentiment in his State when he has reliable ways of learning what that sentiment is.

Executive Powers

The Senate as an Executive Council

Originally it was supposed that the chief business of the Senate would be executive. Its legislative powers were not considered of as much importance as its executive powers. The Senate was to be a small body, of twenty-six members at first, not much more numerous than a President's cabinet. It was expected that they might frequently sit with the President to consider appointments, treaties, and other executive

matters. The senators were to be like ambassadors from the States and it was thought that the foreign relations of the country and giving executive advice would be their chief concern. The Senate was designed to be a moderating body between the two branches of the national Government, advising and helping to control the executive on the one hand and checking the legislative branch (the House) on the other. So far as legislation was concerned it was expected that the Senate would merely revise, or check, legislation, like the House of Lords in England or the Governor's Council in the colonies, but it was not to be equal to the House in determining the policy and merits of new laws. It was supposed that public policy and legislation would be determined by the House and that if a bill passed the House, it would, as a matter of course, pass the Senate unless it was plainly unconstitutional or flagrantly opposed to the public interest.

"In the earlier years the rising intellects and ambitious young men of the country sought the arena of the House as the best place to display their political talents. Mr. Madison observed on one occasion that, being a young man and desiring to increase his reputation, he could not afford to enter the Senate; and it will be remembered that, so late as 1812, the great debates which preceded the war and aroused the country to the assertion of its rights took place in the other branch of Congress." [1]

Growing Importance of the Senate

The changes of a hundred years have brought it about that the Senate has become not only in all respects coördinate, but in many ways a more powerful body in legislation than the House. It has increased its legislative weight and influence while losing none of its control over the executive powers of the nation. So our upper house, the Senate, has become one of the most important and powerful legislative chambers in the world.

[1] Vice President Breckenridge to the Senate on their leaving the old chamber for the new, January 4, 1859. *Congressional Globe*, 1858–9, Part I, p. 203.

The changes of a hundred years have been exactly in the other direction in England. There the House of Lords, which was quite powerful a century ago, has had its powers reduced until it is now quite impotent even to check or prevent legislation by the Commons against a persistent majority in the latter body. There are a number of such instances and differences which go to show that the English Government is much more democratic, in some respects, than the American.

In its *executive* functions the senate may (*a*) participate in the treaty-making power; (*b*) participate in the appointing power.

Treaties made by the President, before they can become the law of the land, must be confirmed by the Senate, by a two-thirds vote of the senators present. A quorum must be present for the transaction of business.[1] A majority vote of the Senate is sufficient to confirm appointments.

The Executive Session

The Senate goes into *executive session* to consider treaties and appointments. This is a secret session, a revival of an early practice.[2] When the Senate goes into executive session the galleries are cleared, the doors are closed, and the obligation of secrecy is imposed upon the senators. No sessions of the Senate are of more interest to the public than the executive sessions.

It is useless, if not harmful, to try to preserve the secrecy of the executive session. It is better to have all governmental discussions and actions in the open, as the people have a right to know what their representatives say and do. It has been contended that matters of grave moment in inter-

[1] For the process of treaty-making see pp. 246–247.

[2] For the first five years of the Senate's history (till 1794) all the sessions of the Senate were held in secret. The sessions of the Constitutional Convention of 1787 were held in secret. It was felt that the people ought not to be allowed to learn what was being said and done, as public agitations might interfere with the deliberations, or the delegates might be too much influenced by popular clamor.

national relations and diplomacy cannot be considered with dignity and safety in public. On the other hand it is widely believed that many of the unbecoming national ambitions, aggressions, quarrels, and wars might have been restrained and prevented if the negotiations and decisions of diplomats had been carried on in public. Rulers should be responsible to public opinion in international affairs as well as in domestic affairs.

The *courtesy of the Senate* refers to the mutual support and privileges the senators accord to one another, especially in the matter of confirming or rejecting appointments. This courtesy comes from the habitual desire of the senators to favor one another where their personal interests are concerned.

Senatorial Courtesy and Appointments

The chief application of senatorial courtesy is found in the support senators give to one another in order to control executive appointments. When the Constitution gave to the President the power to make appointments it was understood that he should decide who was to be appointed; the Senate should check him only when unfit men were named for office. It was not intended that senators should dictate appointments or even recommend men for places. The President now has a free hand only in choosing his cabinet, for the practice soon arose in the Senate of rejecting other nominees of the President on any ground the Senate might choose, for personal or party reasons or merely to spite the President. Then the senators began to claim for themselves the right to control appointments and removals within their respective States.

It came to pass that when the President came to appoint men to office, in Virginia, for instance, the senators from that State, if the President had not consulted them or acted in harmony with their wishes in the matter, were allowed by the "courtesy" of the other senators to decide whether the appointments should be rejected. If the senator from Virginia, interested in the control of this patronage for the sake of his political supporters, advised rejection his colleagues,

remembering that they might sometime wish the return of the "courtesy," rejected the President's nominations. The senators standing together in this way can put pressure upon the President. They insist that before making a nomination to an office in any State, the President shall consult his party friends and leaders in that State, usually the party senators and representatives, and be guided by their wishes. "You help me to control the appointments in my State and I will help you to control the appointments in your State," — a sort of log-rolling [1] process.

This has led to serious abuses until "senatorial courtesy" has become a reproach. It has now come to pass that the senators and representatives distribute the executive offices. Their time and energy are largely taken up by trying to satisfy applicants for office. By these appointments, they build up personal political machines within their States; and what was originally a purely executive power has been surrendered to, or has been usurped by, members of the national legislature. If the President resists or refuses to be guided by this senatorial control, he runs the risk of having his nominations rejected, his administration embarrassed, and his renomination opposed and defeated. The President prefers to consult the senators and representatives, and, so far as seems reasonable, to comply with their wishes, in order to preserve and promote party harmony. This coöperation between a party president and party legislators is a part of our party system or custom which has gradually

[1] In early pioneer days when the settlers were making a "clearing" and were felling the trees and rolling the logs to the stream to float them to the sawmill, or were rolling them in a heap to be burned to get them out of the way, the neighbors helped one another in turn. The work was too heavy for the men of a single household; so "you help me roll my logs and I'll help you roll yours" became the custom. Unfortunately this principle has been applied to legislation.

See the famous case of early log-rolling between Hamilton and Jefferson in the location of the national capital in 1790.

grown up in the country, and it is contended that the President must not break down senatorial political machines or weaken the party organization within a State by an independent use of the Federal patronage.

This "courtesy of the Senate" and party practice has a direct connection with the spoils system, that is, the use of the Federal offices for party rewards in return for party work (see p. 60). The State is regarded as the political domain of the Senator, like a fief under the feudal system, and his political underlords, or workers, must be selected by himself and he must have offices with which to reward them. The appointees must be his men, and they must work for him, either to secure his renomination, or, if the senator be a candidate for President, to help in securing the appointment of the *right kind* of delegates to the national convention.[1]

It must in fairness be remembered, however, that Senators and members of Congress usually know candidates for office in their states better than the President possibly can, and it is convenient for him to consult these public representatives. The custom is a natural growth in politics.

Judicial Powers: Impeachment

The Senate has the sole power to try impeachments. The House, through its proper committee, brings the charges. The President, Vice President, and all "civil officers" of the United States are subject to impeachment and may be removed from office upon conviction of treason, bribery, or "other high crimes and misdemeanors." "High crimes and misdemeanors" is an elastic term and might be made to cover many lines of misconduct, but it has been held to mean not political misconduct or pursuing a public *policy* which may be deemed to be harmful, but some violation by an officer of the Constitution of his oath of office, or the committing of some act which is a crime by law.

Who may be Impeached? Penalty

[1] See Woodburn's "Political Parties," p. 229.

The Senate and Impeachment

When the President is tried on impeachment the Chief Justice presides, but in ordinary impeachment trials, the Vice President or the President *pro tempore* of the Senate presides. The trial occurs before the Senate, the process resembling that of a trial by jury. The House appoints a committee of members to prosecute the charges before the Senate; the accused is entitled to counsel and to full opportunity to present his defense; witnesses are examined; and the Senate then deliberates in secret session while arriving at a decision. A two-thirds vote is necessary to conviction, and in case of conviction no further penalty can be imposed than removal from office and disqualification to hold any office of honor, trust, or profit under the United States; but the officer convicted may, however, be liable to indictment, trial, and punishment for his offense in a court of law.

Under the impeachment court as now established it is the understanding (understandings are a part of the unwritten law) that the senators are on their oath to act, not from any political or party bias, but entirely in a judicial capacity, as impartial judges, and experience has shown that the Senate may be trusted to act in this way. In the celebrated impeachment trial of President Johnson in 1868 seven Republican senators voted, not for conviction, as party spirit was urging them to do, but for acquittal, as they judged the law and the evidence demanded. They received severe party censure at the time, but have been highly commended since for their judicial and constitutional course.

Who are "Civil Officers"?

The Constitution says, as we have seen, the President, Vice President, and "civil officers of the United States" are impeachable. Who are "civil officers of the United States"? The word "civil" is here used in contradistinction to "military"; consequently officers of the army and navy are exempt from impeachment. The military and naval officers are liable to trial and punishment under martial law. It has been held that senators and representatives are not "civil officers of the

United States" and are, therefore, not impeachable. They are regarded as officers of the States, or representatives of the people. Officers of the United States are those included in the executive departments of the Government and those under executive appointment, such as the judges of the United States courts. The penalty for misconduct on the part of a member of Congress is not impeachment but censure or expulsion. In 1798 Senator Blount of Tennessee was expelled from the Senate while his impeachment was pending. He then pleaded that the Senate had no jurisdiction, and this plea was sustained by the Senate and the impeachment case was dismissed. This merely decided that a senator who had been expelled was not subject to impeachment. But it is held that to impeach a legislative officer for his official acts "is repugnant to the nature of the office itself." [1]

Why the Senate has Succeeded

Mr. Bryce has given the following reasons why the American Senate has proved a worthy and honorable body:

1. *It is representative.* It is elective and popular, not hereditary. The senators may now be said to represent the people just as much as the members of the lower house.

2. *It is convenient in size.* A small body educates its members better than a large one, can act together better, and each member has a keener sense of his own responsibility.

3. *The permanence of the Senate and the length of the term.* This has promoted the intellectual ability of its members. It is a more attractive body for able and ambitious men. Members of the house, governors, and other political State leaders look toward achieving a seat in the Senate. The *lower* house is sometimes regarded as a political stepping stone to the *upper* house.

4. *It is not subject to rapid fluctuations of opinion.* The

[1] Wharton's State Trials, cited by Foster on the Constitution, p. 317.

Senate thus forms a bulwark against popular excitements and agitations. The Senate may better appreciate the importance of continuity in policy. The majority of the senators always have four more years to serve and public feeling is likely to change in that time, and a policy unpopular at the start may grow into popularity before it can be upset. So the Senate is able to fulfill one of the three great functions of its creation, restraint of impulsive and hasty legislation and appealing to the sober second thought of the nation.

TOPICS AND QUERIES

1. Why is it thought a greater honor to be a member of the Senate than of the House?
2. Would it be constitutional for the President to make the Vice President a member of the Cabinet? What would be the advantage of doing so?
3. Why should Nevada with about 80,000 inhabitants have as many representatives in the Senate as New York with 10,000,000 inhabitants? How did such unequal representation come about?
4. How would you remedy abuses arising from the "courtesy of the Senate"?
5. Should all secret sessions of the Senate be abandoned? Why?
6. How did the Senate come to have treaty-making and diplomatic functions?

REFERENCES

Read from Reinsch's *Readings on American Federal Government,* Chaps. IV, V. These contain reproductions of good articles in periodicals. Consult the Reader's Guide to Periodical Literature for other articles. Use the authorities given at the close of Chap. XII.

CHAPTER XV

THE HOUSE

Congress: The Difference between the Two Houses

Congress, as we all know, consists of two houses, the Senate and the House of Representatives. The House of Representatives is called the *House*, for short. It will be remembered from the history of the Old Confederation (1781–1787) that the Congress under our first constitution consisted of only one house. To that old Congress a State might send as many as seven representatives, if it chose, or as few as two, but each State had only one vote. If a State had only two representatives present and these two could not agree, the State lost its vote. All questions were decided by States. In the convention of 1787 when the new Constitution was being made, some of the longest and most heated discussions were over the question of representation. Should the States continue to have an equal vote, that is, equal power, in the new Congress? The small States wished equal representation, the large States proportional representation. Since all had agreed that there should be two houses in the new Congress, a compromise was arranged by which the small States should be given an equal vote with the large States in the Senate, while in the house the States should be represented according to population. This plan allows Nevada with a population of about 80,000 as much power in the United States Senate as New York with a population of nearly 10,000,000, while in the House New York has forty-three votes and Nevada only *one*. According to the democratic representative principle equal numbers of people should have equal power and unequal numbers of people should have unequal power. One hundred thousand people should have more weight in

government and law-making than one thousand people; ten men should count for more than one. So the compromise plan for our two houses of Congress made the Senate not a democratic, but a *federal*, body where statehood decides, as under the Old Confederation, while the House is a more democratic *national* body where people are represented in proportion to numbers.

Apportionment of Representatives

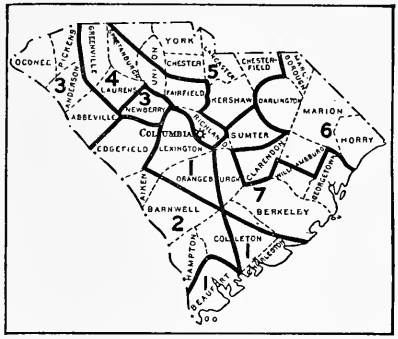
Decennial Apportionment Acts

In order that each State may be allotted its share of representatives in the House the Constitution provides that every ten years a national census shall be taken. After every census it is the duty of Congress to determine how many members there shall be in the House of Representatives and to allot to each State the share to which its population entitles it. This is done by an "Apportionment Act." The last Apportionment Act of August 8, 1911, fixed the membership of the House at 435 and provided that if New Mexico and Arizona became States before another census were taken they should have one representative each. These States have since been admitted and the House now consists of 435 members. The number 435 was fixed upon because that was the lowest number that would prevent any State from losing a representative. Dividing the whole population of the country by 435 a ratio of 211, 977 for each representative was obtained. So there is one representative for (almost) every 212,000 of the population. The population of each State is then divided by the ratio and one representative is assigned for each full ratio and one for each major fraction.

Neither Delaware, Nevada, nor Wyoming, has a population equal to 211,977, but two of them, Delaware and Wyoming, have each more than half the ratio (a major fraction), while Nevada, though having less than a major fraction of the ratio, gets a member, because the Constitution provides that each State shall have at least one representative.

The Apportionment Act of Congress provides that the representatives of each State shall be elected in districts "composed of contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants." While a Congressional District should have approximately 212,000 people, it is not possible to make the districts exactly equal in numbers. In many States the districts are very unfairly laid out by "gerrymanders."

The Gerrymander



A Gerrymandered State

An early gerrymander in South Carolina. Note the irregular shape of the districts.

As we have noticed, it is the business of the State legislature to lay out the districts from which the representatives are to be elected. *Gerrymandering*[1] is the process of laying out the districts in such a way as to give to a political party an unfair advantage, by enabling the party to carry more districts than its party vote entitles it to. This is done by "throwing the greatest possible number of hostile voters into a district which is certain

[1] The term "gerrymander" is derived from the name of Elbridge Gerry, of Massachusetts, who was Vice President of the United States from 1813 to 1814. In 1812, while Gerry was Governor of Massachusetts, his party (Republican) redistricted the State, laying out the districts in such a way that the shapes of the towns forming a single district in Essex county gave the district a dragon-like shape. This was indicated upon a map of Massachusetts which a Federalist editor had hung up over his office desk. The celebrated painter, Gilbert Stuart, coming into the editor's office one day and observing the uncouth figure, added with his pencil a head, wings, and claws, and exclaimed, "That will do for a salamander." "Better say a Gerrymander," growled the editor, and the name has found a permanent place in our language.

to be hostile and by adding to a district where parties are evenly divided a place in which the majority of friendly voters is sufficient to turn the scale." That is, the gerrymandering party will arrange the districts so that it may carry as many as possible by safe majorities, while it will seek to mass the opposing party votes and allow them to carry a few districts by large majorities. It coops up the opposing votes in as few districts as possible.

Legal Difficulties to Gerrymandering

There are two legal impediments in the way of gerrymandering. First, the districts must "be composed of contiguous territory," and, second, they "shall contain as nearly as practicable an equal number of inhabitants." These restrictions are imposed by the apportionment acts of Congress. The *gerrymander* disregards both of these requirements illegally. The districts are made very unequal in numbers and they are distorted in shape by uniting counties out of their natural position. One district may be made to contain 60,000 voters, or 300,000 people, another may have only 30,000 voters, or 150,000 people, — which violates the principle of fair and equal representation. One New York district was made to contain only 165,000 inhabitants, while an opposing district was made so large that it contained 450,000 inhabitants. It is political trickery of the worst kind.

Many examples of irregularly shaped districts have been cited, — the "shoe-string districts" in Missouri and Mississippi, very long and narrow; the "saddle bag district" in Illinois, comprising two groups of counties at different sides of the State so connected as to crowd as many opposition counties as possible into one district; the "belt-line district," running around Chicago; and the "dumb-bell district," in Pennsylvania. These indicate some of the freakish shapes that have been made out of the districts in order to make sure of the right party majority. Both parties practice this political trickery and they apply it to the States to secure control of the legislature as well as to elect an unfair number of Congressmen.

Election of Representatives

Prior to 1842 a State was permitted to elect all of its representatives to Congress on a common ticket as we now elect presidential electors; that is, all the Congressmen from a State might be elected at large, if the State desired it; so if a party carried the State it got all the Congressmen from that State and the other party got none. Congress may at any time make or alter the regulations for electing representatives, and in 1842, owing to a contest over the five members elected at large from New Jersey, Congress passed an act requiring the States to elect by districts. Each State has as many districts as it has representatives and no district can elect more than one representative. In case of an increase in a State's representatives after a new census the additional Congressmen may be elected by the "State at large," until the State can be redistricted. It is the duty of the State legislature to redistrict the State at its first session following the apportionment. These representatives are known as "Congressmen at large" and the present act requires that they shall be "nominated in the same manner as the candidates for Governor, unless otherwise provided by the laws of the State." This secures to the people of a State who have adopted the primary nominating system the use of that system in naming their Congressmen at large.

Representatives are elected by Districts

Members of the House are elected by a direct vote of the people. Any one may vote for a representative who is entitled by his State law to vote for members of the lower house (the more numerous branch) of his State legislature. In some States women may vote for members of Congress and for the President, while in other States all women and many men over twenty-one are denied the privilege of voting. It all depends on the law of the State, though by the fifteenth amendment no State may prevent men from voting on account of their race or color.

How Representatives are elected

A State may limit the right of its adult male citizens to vote by imposing an educational or property qualification for the suffrage or any other reasonable qualification, but if a State does so restrict its suffrage, then, as is provided by the fourteenth amendment, its representation in Congress shall be proportionately reduced, but this provision of the Constitution has never been enforced nor is it likely to be enforced.[1]

Congress regulates the Election of its own Members

The Constitution provides that Congress may at any time by law make or alter the regulations touching the times, places, and manner of holding Congressional elections. In accordance with this provision Congress in 1842, as we have seen, provided for election by districts. In 1871 Congress enacted a law providing that its members should be chosen by written or printed ballots, and in 1872 a law of Congress required that all representatives should be elected on the same day throughout the Union, namely, on the first Tuesday after the first Monday in November. Later those States were exempted from the uniform election day whose constitutions provided a different day for electing their representatives. Maine and Vermont still elect Congressmen in September, and Oregon elects hers in June.

Qualifications, Privileges, etc., of Representatives

Qualifications of Representatives

A representative in Congress must be at least twenty-five years old, he must have been for seven years a citizen of the United States, and he must be, at the time of his election, an inhabitant of the State from which he is chosen. He is elected for a term of two years.

The Congressional Term

The term begins on the 4th of March in the odd numbered years, though a newly elected Congress does not meet (unless the President calls it into extra session) until December, fully thirteen months after the November election in which the members were chosen. The salaries of members begin with the 4th of March. It seems that the long delay of more than a year between the

[1] On the suffrage see p. 10.

election of a new Congress and its meeting ought to be avoided and that a Congress elected in November ought to meet not later than the following January. This would enable Congress to carry out promptly any policy which the country may have declared for.

Sessions of Congress

There are two regular sessions of every Congress, each beginning on the first Monday in December. The first, or "long session" may last well into the following summer. The "short session" (from December to March) must close at high noon on March 4th of the odd numbered years. It sometimes happens when Congress is rushed in the closing hours of the short session that the sergeant-at-arms turns back the clock to give the House more time to finish its business. If an old Congress expires with important or necessary business unattended to the President may call an early extra session of the new Congress. In this way under President Wilson the 63d Congress was kept in session for nearly a year at a stretch.

District Residence required by Unwritten Law

The law does not require that a representative shall reside in the district from which he is elected, but custom has made it so by a law of the "unwritten constitution," and we seldom, if ever, find a man running for Congress who does not live in the district from which he seeks election. This custom of requiring members of Congress to live in their districts has been much criticized. The English custom is different. There able men from the cities may represent country districts, or country gentlemen may be sent to Parliament from a city constituency. Mr. Gladstone, who lived in Wales, represented a Scotch constituency for many years, and he might have been elected from Cork in Ireland. An important leader in America may be "gerrymandered" out of Congress if the opposition party gets control of his State legislature. This could not happen in Great Britain. There, if a great party leader were likely to be defeated in his own district, he could "stand" for election in some other district

where his party had a safe majority; or he might be elected for two or three districts at once. He would then accept for the constituency which his party would have the greatest difficulty in carrying and let other candidates of his party stand for election in the other districts (constituencies).

English Idea of Representation

In England the election lasts for a week or more, since a man has a right to vote in as many places as he has property, and he is given time to get around. In England the people think of a member of Parliament as a representative not of a district or of a particular locality but of the whole nation, and it is claimed that the American district system tends to make the representative narrow in his views and to lead him to try merely "to get things" to carry home for his district, — pensions, public buildings, river and harbor appropriations, etc., — called a share of the "pork barrel" in political slang, instead of playing the part of a national statesman with a view to the welfare of the whole country. However, the system of local representation is thoroughly established in America. It began in the colonies and it was upheld by the defenders of the American Revolution when they were told that America had "virtual representation" in Parliament through men who did not live among them. In a large and diversified country of varied interests, it may be better that different and widely separated localities should be represented from among their own people, and the representative be thus held more directly responsible to his constituents.

Salaries

The salary of a representative, as also of a senator, is now $7500. Each member is allowed also $1200 a year for a secretary, $125 a year for stationery, and mileage of twenty cents a mile in going and returning by the shortest route between his home and Washington City. Congress may determine the amount of the pay to be given to its members. It is restrained only by public opinion and its own sense of duty and propriety.

If a vacancy occurs in the House by the death, resignation,

or expulsion of a member, the Governor of his State must issue a writ for an election in the member's district. This is done without much delay and a special election is held.

Vacancies; Disabilities of Members

All members have, in theory, the privilege of free speech and free debate (limited by the rules of the House) and freedom from arrest (except in cases of treason, felony or breach of the peace). It would not do to have a member prevented from attending, speaking, or voting in the House by his arrest on some charges that might be trumped up for just such a purpose.

No member of Congress, either senator or representative, may hold any civil office of the United States during his congressional term, nor may he be appointed to any office which has been created or the salary of which has been increased during his term. This is to prevent members from seeking to create offices or make others more lucrative, with a view to their own appointment thereto.

That members might vote measures in favor of themselves was greatly feared as a source of corruption by the framers of the Constitution. The early feeling was that members of Congress ought not even to aspire to existing offices which their influence and position in Congress might help them to obtain. In 1825, when Jackson became a candidate for the presidency, he resigned his seat in the Senate for fear it might be thought he would use his senatorial position to promote his candidacy. Oftentimes members of Congress who have been defeated for reëlection are appointed to lucrative offices by the President for party or personal reasons. After being "retired" from public life by their constituents they are "taken care of" by their party chief. These are called the "lame ducks" of politics.

Officers of the House

The chief officers of the House are the Speaker, the Clerk, Sergeant-at-arms, Door-keeper, Postmaster, and Chaplain. The Clerk, with his assistants and stenographers, keeps the

rolls and records of the House. The clerk of the former House presides while the new House is being organized and a Speaker elected. The Clerk makes up the roll of the newly elected House. In case of a contest he is not to decide what name shall go on the preliminary roll, but he always places on the roll the names of those holding the official State certificates of election. After the House is organized by the election of its officers the House itself decides (upon the report of its judiciary committee) what contestants have been duly elected and are entitled to their seats.

How the Officers of the House are elected: Party Caucuses

The House elects its own officers. This election is a matter of form, as the real election has already been made by the majority party at its caucus. The representatives of each party have a meeting called a caucus in which they nominate a list of House officers to be voted for when the House meets to organize. The rule of the caucus is that those who participate in its proceedings must support its decisions in the open House. So the House has always elected the candidates selected by the caucus of the majority party.

The man put forward for Speaker by the minority caucus is always recognized as the minority leader on the floor. He directs his party followers in "playing the political game" or in trying to put the majority "in the hole" as to pending legislation, or attempting in other ways to get political advantage for his party in the opinion of the country at large.

The majority leader on the floor is the chairman of the Ways and Means Committee. He, together with the Speaker and the Committee on Rules ("steering committee"), guides the business, debates, and deliberations of the House, seeks to circumvent the minority in any obstructive tactics its leader may adopt, and brings the House to decision and action.

The Speaker is the most important officer of the House. The title "Speaker" comes from England, from the time when this officer served as spokesman of the Commons when that body wished to address the king. In the Commons the

Speaker is not a party officer but merely an impartial moderator of the House, like the Vice President in the Senate, to observe the decorum of the House and to hold an even hand between parties. It is said the Speaker "forgets to what party he belongs" when he leaves the benches of the Commons to take the Speaker's chair, and the same Speaker is often continued even through changes of party control in the Commons.

The Speaker and his Power

In America it is quite different, the Speaker being a party leader and being expected to give the advantage to his own side where it can be done with reasonable partisan fairness. His powers are not so great as in former years, but he is still the most important legislative officer in America, and, next to the President, the most important man in public life. Formerly he had full power to appoint the committees of the house and to name the chairman of each committee, and as nearly all legislation was decided on in these committees (the house acting in harmony with their reports), this gave to the Speaker almost autocratic control over legislation. If the Speaker favored a certain measure or policy he saw to it that the committee having the matter in charge was made up to promote that end; if he opposed a pending policy he made up a committee unfavorable to it.

Former Sources of the Speaker's Power

Another source of the Speaker's power came from his position as chairman of the Committee on Rules. This is a "privileged committee," having the privilege of reporting a *special rule* for a *special order* at any time, by which the House stops for a time considering the business before it and takes up other business which the Committee on Rules wishes to bring before it for passage. Its purpose is to expedite business, prevent debate, and to bring the House to act on those measures upon which the Speaker and the party Leaders wish to have it act. The Committee on Rules is therefore an all-powerful steering committee with power to direct the order of business for the House.

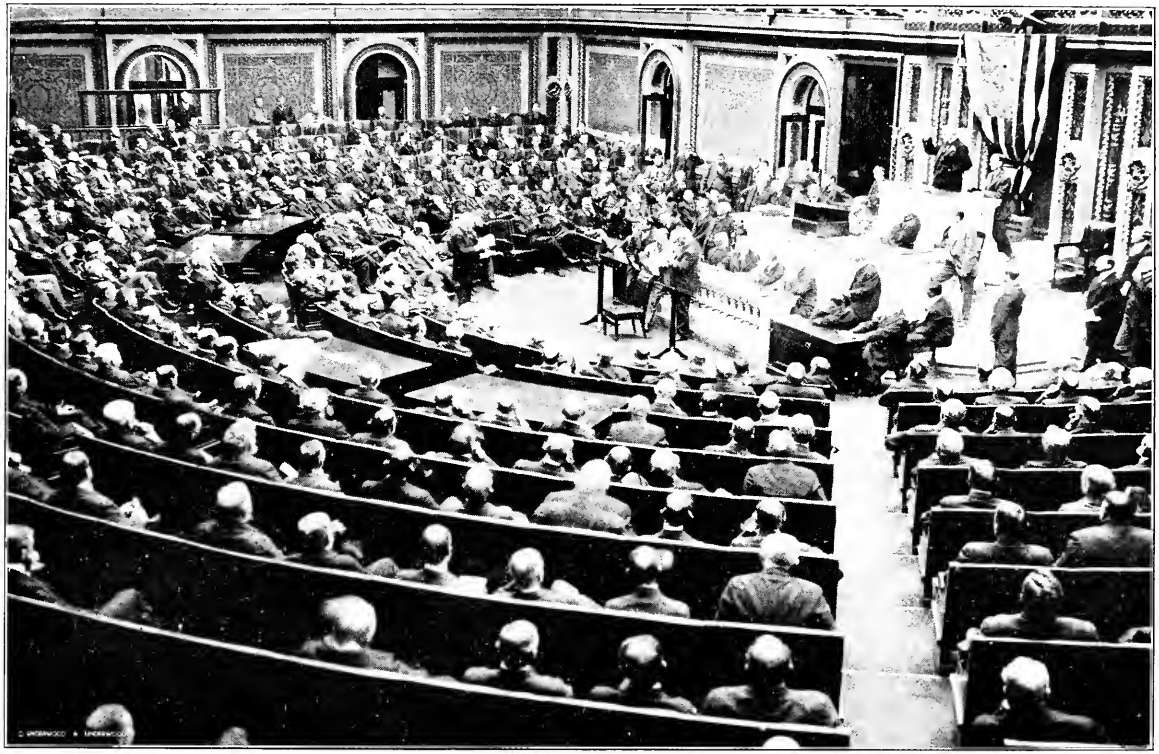
Curtailment of the Speaker's Powers in 1911

In 1911, after some years of agitation against the growing "one-man power," of the Speaker and in answer to a public demand for more popular control over legislation, the entire committee system and the House rules were reorganized. The first step was that the power of naming the committees was transferred to the House itself. The real power of selection, however, rests with the party caucus. The caucus of the majority party elects the majority members of the important committee of Ways and Means and then makes that committee a Committee on Committees to select the other majority members of the various committees. The Speaker was also deprived of his membership in the Committee on Rules, which the caucus now selects. Its membership was increased from five to ten members, elected, four by the minority and six by the majority.

So now by the caucus instead of by the Speaker the control of the House is put into the hands of a very few men. The minority party caucus is allowed to select their members on the committees, the majority party in the House always having a majority on each committee. This is necessary in order to expedite or control the business of the House and to prevent the opposition minority from obstructing legislation, and it is thought that the party caucus represents popular action more than the old system of control by the Speaker and his Committee on Rules.

Present Powers of the Speaker

In spite of this curtailment of his powers, the Speaker still wields the strongest influence in legislation. He presides over the proceedings of the House, refers bills to committees, and in general is the leader of his party in the House. In presiding over debates, he recognizes whom he will. The Speaker usually arranges with the floor leaders of the respective parties that the floor is to be assigned to members in a certain order and for certain purposes. But in a general, promiscuous debate, the Speaker can and does select those men for recognition who will voice the sentiments which he wishes to



The Opening of a Session of the House of Representatives

A Congressional Committee in Session

Secretary of the Navy, Daniels testifying before the House of Representatives Naval Committee.

Office Building, House of Representatives

This building is opposite the House of Representatives wing of the Capitol. Each representative has an office and there are rooms for committee meetings.

have expressed. Therefore, the Speaker can not only protect his own party from defeat and delay, but within his party he can strengthen and develop that group of men which he favors.

The party "Whip" in Congress is one of the lieutenants, or aids, who helps the organized leaders in conducting the party business and in securing the passage of measures in which the party is interested. He may be one of the principal leaders who acts, in a way, as a "go-between" between the party organization of the house and the party members. The "Whip" is an English term and indicates an important party officer in the Commons. There the "Whip" is expected (1) to inform members on Cabinet, or Government, business; to explain to them the merits of a measure, and to tell them how to vote if from absence or inattention they are ignorant of the business in hand; (2) to "keep a house," that is, a quorum, ready to pass Government bills when they come up. They are to make sure that the party majority are at hand ready to pass the party measures; (3) to act as tellers, or to count members when they pass by on a vote or a division; (4) to obtain pairs for party members, when they cannot be present, during a vote; (5) to keep himself informed of party opinion in the house and to inform the leader to what extent he may depend upon party support.

The "Whip"

While the functions of the American "Whip" are not so clearly defined he performs most of these duties.

The Committee System of the House

The rules and order of procedure of the House are too complicated for consideration here. They are to be understood only by observation or experience in the House, and not always then, as they are the result of years of precedent and custom. A general explanation may be given of the House committee system in legislation. There are over fifty regular standing committees in the house, and special committees are frequently appointed. Each of these committees takes

into consideration the bills or measures assigned to it, every bill going before a committee before it is considered by the House, unless the rules should be suspended and the bill should be put upon its passage for some very unusual reason, and even then the chairman of the proper committee would report it as having been already considered. Sometimes there is rivalry between two committees for the control of a bill. The Speaker decides to which committee it shall go, unless he is overruled by the House.

Committee meetings for the consideration of a bill have usually been in secret, though "open hearings" may be allowed at which those interested may appear before the committee to advocate or oppose the measure. In recent years there has been an increasing demand for full publicity in committee proceedings, since the fate of a measure is usually decided in the committee and it is right that the influences brought to bear in committee should be known to the public and that a member's constituents should know how he votes and acts toward a measure, not only in the open House but also in the committee, where his vote and influence may be much more important. A committee may "smother a bill" by refusing to "report it out," and give the members of the House a chance to pass it; or it may amend a bill or report a substitute. If the majority of the House is determined to consider or pass a bill which a committee is "smothering," it may order the committee to report, and the committee would have to obey the mandate of the House, but recourse to this process is seldom. Committee leaders are disposed to stand by one another in the exercise of their prerogatives.

When, after due consideration, a committee decides to report a measure for passage the House can have but a very short time to discuss or consider it, there being so many measures pressing for attention. This leads other members not on the committee having the bill in charge to vote in favor of the committee's recommendation. The others have

How Committees work

been busy with their own lines of committee work in legislation, and they assume that the committee in charge is better informed on the matter of the bill and have fully and honestly considered it and have come to the best conclusion. In any case they are likely to vote for the measure and throw the responsibility for its passage upon the committee. As a rule there can be but little discussion in the House, perhaps only two hours being allowed for debate. The chairman of the committee having the bill in charge gives an outline of the measure, explains it, and summarizes some brief reasons for its passage. A few members may be allowed to speak for or against it, if they can arrange with the Speaker and the floor leader for recognition. The House goes on the theory that it is not a *talking* body but a *deciding* body and that it must approve or reject the conclusions of its committees.

It is not possible here to describe fully the work of the various committees of the House. The major committees are the Committees on Ways and Means, on Appropriations, on Commerce, Rivers and Harbors, Postal Affairs, Naval Affairs, Military Affairs, Invalid Pensions, etc.

Ways and Means Committee

The chief business of the Ways and Means Committee is to devise "ways and means" of raising money. This is the most important committee of the House. Its chairman is the leader of the majority party on the floor, ranking next to the Speaker. Revenue bills originate in this committee, though it may decide to approve a money bill recommended by the Secretary of the Treasury. The report of the Secretary of the Treasury is referred to this committee, but the committee is not bound either by law or custom to base its bills and measures on this report. It would seem that in originating and presenting bills to determine how much money should be raised, the committee ought to know how much money will be spent. But the committee does not know this, since there are various spending committees of the house offering bills and pressing them for passage, which call for money, and no one knows

how much will be called for in the aggregate. Only a rough estimate can be made, with the important committees sometimes working at cross purposes or at loggerheads, in a blockhead sort of fashion. "Each pursues its own way without reference to the others, and none of them is guided further than it chooses by the Treasury Department. All the expenditures which they recommend must be met by appropriation bills, but into the propriety of these bills the Appropriation Committee cannot inquire." [1] So, no matter what the Ways and Means Committee may do, there may be a deficit, — or a surplus, which is almost as bad.

Evils of a Government Surplus

If Congress allows a great surplus to accumulate in the treasury, it takes money unnecessarily from the pockets of the people and from the arteries of trade. Idle money is useless, or worse, as it tempts Congress to extravagance, waste, and favoritism in its appropriations. The debts (bonds) of the government cannot be paid until they fall due. Sinking funds are provided by governments for debt-paying purposes.

Appropriations Committee

The most important spending committee is the Committee on Appropriations. Until the Civil War the work of this committee was combined with that of the Ways and Means Committee, but since then it has been separate. It has charge of all the large civil and diplomatic appropriation bills which carry money for the vast expenses of the government. Other committees have charge of bills which carry large appropriations, — for the Army, Navy, Rivers and Harbors, Post Office Department, Pensions, etc. The need of coöperation and concerted action among these committees is apparent. To promote this end a "budget scheme" has been proposed.

The Budget System

A budget is a plan for financing a government for a definite period of time. It is an estimate of expenses and income, showing where and why increases or decreases are estimated. It is prepared by a responsible executive and offered to a representative assembly, or legislature, whose approval is

[1] Bryce, Vol. I, p. 178.

necessary before the plan may be carried out. This budget, or financial plan, involves not only an estimate of government needs, but an estimate of financial resources. These estimates are made upon reports from many persons from various departments who know the needs and operating expenses of the government, the kind of work to be done, and the requirements for all the public officers and institutions. These estimates and requests are all arranged by one responsible executive who presents and recommends the budget to the legislature with suggestions as to the most available sources of revenue. It should be examined and approved by one single legislative committee, and, when adopted, it should be accompanied by an accounting system that will show clearly where its provisions are violated. The purpose of the budget system is to find a method by which the President and Congress (or the Governor and the State legislature) may consider and act together on a definite business and financial program; to bring the several departments of the government and the financial committees of Congress into harmony and under one leadership in deciding how much money to ask for, how it shall be raised, and how the money shall be spent. Heretofore there has not been enough coöperative action between Congress and the Executive in financing the Government, and the result has been waste, extravagance, and lack of efficiency. It is hoped by the budget system that the Government may be able to secure economy and efficiency by bringing the business of devising a plan for raising and spending money under one responsible business head, like the President and his Cabinet, and not under forty different committees working at cross purposes. Many business firms are so conducted and they oversee their income and outgo in a sensible and businesslike way.[1]

[1] See the Report of the Commission on the Need of a National Budget, sent by President Taft to Congress, June 27, 1912. House Document, No. 854, of the Sixty-second Congress, second Session. Also the Bulletins of the Bureau of Municipal Research, New York City.

Evils of the Committee System

Mr. Bryce and other political observers of our Congress have named a number of evils in the committee system: (1) It breaks up the unity of the House, — creating fifty or more little legislative bodies, — namely, the committees. (2) It cramps debate. There is no use attempting effective speaking in the House since the real decisions are made in the committees. (3) It lessens the harmony of legislation, since the committees proceed without knowing what other committees are doing, the result being that inconsistent and conflicting provisions are inserted in our statutes. (4) It facilitates corruption. The members of the House tend to shift their responsibility to the committees, and so long as committees may act behind closed doors, without minutes or record of their proceedings, a member may escape exposure for wrongdoing. Thus it reduces the responsibility, and corruption is more likely to prevail if no one can be held responsible for what is done. A member may oppose a measure in committee while pretending to favor it in the open House. (5) It dissipates the ability of the House. The able leaders are chairmen of different committees. It is contended that it would be better to bring fifteen or twenty of these more experienced public men together into one central guiding committee in charge of all the important legislation of the house, like the English Cabinet. The country would then know who was responsible for the failures and shortcomings in legislation. There would be oversight, consistency, a common plan and leadership in all lines of legislation. (6) It lowers the interest of the nation in the proceedings of Congress, since real debates and decisions are not expected there.

Benefits of the Committee System

On the other hand the committee system has its advantages: (1) It is a convenient means of killing off worthless bills. Fully twenty thousand bills are introduced into a single Congress; hardly one in twenty can be considered or passed by the House. The committees must kill them off and save the time of the House. (2) It enables the House to deal

with more measures. The House by trusting its committees to kill or report bills may legislate on more subjects than would otherwise be possible. (3) It promotes specialization in legislation. The chairmen of the committees on Naval Affairs, Foreign Affairs, Commerce, etc., may have given special attention and many years of study to the field of legislation with which their committees have to deal. It is hardly likely that a body of men in a central committee for all business could have so wide and efficient a grasp on all departments of legislation as the better chairmen have over their special work. (4) The committees afford a good means of investigating and scrutinizing the executive departments, and (5) They serve as a means of communication between the legislative and executive departments. Members of the President's cabinet and other executive officers interested in promoting or opposing certain legislation may appear before the committees and present their cause. Thus the necessary coöperation is obtained between those who make the laws and those who are responsible for their working in practice.

How a Bill Becomes a Law

A bill may be introduced into either the House or the Senate.[1] It is read by title and referred by the presiding officer to the proper committee. There its fate rests, without any presumption in its favor, to be amended, reported favorably or adversely, or not reported at all. If the bill receives the approval of the Committee it is reported back to the House of its origin with a recommendation that it be passed. It is then read a second time in full and is placed upon the calendar, along with hundreds of others that are waiting to be taken up. The "calendar" is the grave-yard of unnumbered buried bills awaiting their turn to be brought out to the light and life of a legislative day which in Congress lasts as long as the House remains in session, — it may be a day,

[1] All bills for raising revenue must originate in the House.

three days, or a week. To get at a bill on the calendar the house must either (1) await the bill's turn in its order, or (2) advance it upon the calendar by a special order, that is, set a special time for its consideration, and this will call for the consent and coöperation of the Committee on Rules (see p. 280). When the bill comes up a third time it is read only by title, *unless a full reading is demanded.* If the bill under consideration is a House bill, the House may go into the "committee of the whole" to consider it. This is the whole membership of the house acting as a committee. It is a form of proceeding in which the House is less hampered by rules and debate is freer. When the House goes into committee of the whole, the Speaker calls some member to the chair. While the debate is free, it is necessarily limited. Every member may have a chance to speak but the speeches are limited to five minutes each, and no member may speak twice without special permission. If the committee of the whole votes favorably on the bill, the "committee rises," the Speaker again takes the chair, and the chairman of the committee of the whole reports the bill to the house for passage.

Committee of the Whole

Filibustering in Congress is the process of resorting to parliamentary tactics for the purpose of delaying, or obstructing, or preventing, the business before the House. The process consists of "moving to adjourn," or "moving to take a recess," or that "when the house adjourns, it adjourns to a certain hour," or making other "dilatory motions," or calling for the yeas and nays, thus causing a roll call (which consumes half an hour) or making long speeches. Windy "filibusterers" are fertile in long speeches. The time of the House may be taken up in this way without limit unless there is some rule to prevent it. The House has a *cloture rule*, to close debate, shut off filibustering, and bring the House to a vote, which the Senate has only lately allowed. A *cloture rule* is a rule or resolution which provides that after a certain limited time for debate, each side being allotted its share of time, all motions

Filibustering

Sixty-fourth Congress of the United States of America;

At the First Session,

Begun and held at the City of Washington on Monday, the sixth day of December, one thousand nine hundred and fifteen.

AN ACT

To establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the Act of February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States: *Provided*, That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants.

SEC. 2. That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions affecting the

FACSIMILE OF A FEDERAL LAW

Act providing an eight-hour day for railway employees passed Sept. 1916, to forestall a general railway strike. (See other side.)

relations between such common carriers and employees during a period of no less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; that each member of the commission created under the provisions of this Act shall receive such compensation as may be fixed by the President. That the sum of $25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, per diem, traveling expenses of members and employees, and rent, furniture, office fixtures and supplies, books, salaries, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury.

SEC. 3. That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this Act for a standard eight-hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the pro rata rate for such standard eight-hour workday.

SEC. 4. That any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 and not more than $1,000, or imprisoned not to exceed one year, or both.

Champ Clark

Speaker of the House of Representatives.

William [illegible]

~~Vice-President of the United States and~~ Acting President of the Senate pro tempore.

Approved 3 September, 1916.

Woodrow Wilson

Approved 5 September, 1916

Woodrow Wilson

and business are out of order except the "previous question" and a vote on the pending bill, and the Speaker is empowered to recognize no member for the purpose of making a dilatory motion and to declare all such motions out of order. The Speaker knows such motions when he sees them or hears them.

The *previous question* is a parliamentary remedy against filibustering. If members are indulging in obstructive debate or motions merely to stave off or prevent business, a member may move that the "previous question" be put, or placed before the House; that is, the motion or measure which the majority had started to pass before the filibustering began. When this motion is made no other motion or business can intervene, but the Speaker must then put the motion, or ask the House whether it desires an immediate vote on the pending measure. If the House says yes, by carrying the motion for the "previous question," then the original measure must be put upon its passage.

In the Senate the debate was always unlimited. But since the 4th of March, 1917 after "a little group of wilful men" obstructed action desired by the overwhelming majority of the Senate for the protection of American citizens and American ships, the previous question is allowed in the Senate for closing debate and bringing the Senate to a decision.

Quorum

A quorum in any parliamentary body is the number authorized by its constitution legally to transact business. In Congress the majority of each house constitute a quorum. For a hundred years, whether a quorum was present (if any one raised the question) was ascertained by a roll call. If a majority answered to their names a quorum was held to be present, and what the majority of this quorum decided upon could be legally passed. If a majority did not answer on the roll call, then it was held that no quorum was present and the pending business was blocked. The House could not act until the majority were both present and ready to do business by voting. Members, though present, could "break the

"Breaking a Quorum"

quorum" and stop the business of the House by refusing to vote. When a party had only a small majority in the House it had to have all its members there before it could carry anything through if the opposition party chose to block it. "Breaking the quorum" in this way, by refusing to vote either yes or no on roll call, or to say "present but not voting," was a common method of filibustering. This was the situation in 1890 when Speaker Reed made his celebrated decision and "made a quorum" by instructing the clerk to count as "present but not voting" a number of the minority members whom he saw present but who were refusing to vote. The filibustering was defeated and the House was enabled to proceed with its business. After that a quorum was determined both by roll call and the seeing of the Speaker, and the opposition members who were in their seats in large numbers had to submit to being counted as present.

"Making a Quorum"

The Constitution provides that if a quorum is not present a smaller number may adjourn from day to day and compel the attendance of absent members. The Sergeant-at-arms may send for absentees and they may be brought in and censured or fined for unexcused absence. A quorum is often made in this way. Many times the House proceeds in the transaction of business while there is no quorum present; in fact while only a handful of members are in the House. According to a legislative fiction, so long as no one objects to what is being done the House is supposed not to know that there is no quorum present. But if any member wishes to object to what is going on when routine bills are passing through the legislative hopper at a rapid rate, he may do so by "raising the question of the quorum." Then the passing of bills stops until a quorum is brought in. This delay will call attention to the measure to which the attentive member has raised objection, and it will not be passed unless the majority are ready to become responsible for it. In this routine passing of bills while only a few members are present,

there is an opportunity for some "bad job" or "steal" to get through, which illustrates the importance of having some "watch-dog of the treasury" on guard in the person of some faithful representative who will not tire out in guarding the interests of the public.

Before the final debate in the House begins, an arrangement is generally made by the Speaker, the chairman of the committee in charge of the bill, and the minority leader, for the allotment of time, a list of members being agreed upon who are to be heard for and against the measure. No others will be recognized by the Speaker, and thus the control of the debate is placed in the hands of the leaders on either side. The leaders of the majority have power over the debate, but, as a rule, they act generously in allowing the minority to be heard by their own chosen representatives.

Methods of voting

There are four ways of voting on a measure in Congress: (1) By a *viva voce* vote. By this the presiding officer calls for the "ayes" and "noes," and decides according to the volume of sound. If exception is taken to his decision a division may be called for. This is obtained by (2) a standing vote. Those for and against a measure rise in succession and are counted by the tellers. Sometimes a presiding officer arbitrarily refuses to hear or heed a call for a division. He declares the measure carried or defeated, and, pounding with his gavel for order, he proceeds to announce that the next item on the calendar is before the House. This is called "gavel rule." There have been serious abuses of this kind. A presiding officer is prevented from becoming too highhanded and unscrupulous in "gavel rule" by public opinion and his fear of going beyond what the members will endure. (3) A vote may be had by the members passing between the tellers in front of the Speaker's desk. (4) By a roll call. The clerk calls the roll and each member answers "aye" or "no." This is the only way by which members may be placed upon record in a vote. One fifth of the House may demand a

roll call and thus put the members "on record" in their voting. This is quite a restraint, as members often change their votes when they know that how they are voting can be found out from the record.

Pairing off

Members of opposite parties pair off with one another on party questions when they wish to be absent, so the party vote remains relatively the same. If a member who is paired is present while his "pair" is absent, he is under obligation of honor not to vote. To take advantage of one's "pair" by voting on a party question while he is absent would be the height of dishonor. Pairs are arranged by the Whip and are a matter of record. Oftentimes a member, when a vote is being taken, will announce, "I am paired with Mr. So-and-so, who is absent; if he were present I would vote 'No.'" That explains where he stands and why he does not vote.

Conference Committee

If a bill passes one house (which it does if it receives the votes of a majority of the quorum), it goes to the other house and goes through essentially the same process there. There the bill may be entirely defeated and laid on the shelf, or it may be amended, in which case the bill will have to come back to its original house for concurrence. If the two houses cannot agree separately upon the terms of a bill there is a "deadlock," a *conference committee* is appointed, say three or five members from each house, whose business it will be to try to adjust the differences and to come to some agreement. Here some compromise is likely to be arranged. Then the conferrees from each house report back to their respective houses the amended bill as agreed to and it is passed by each house. The famous Missouri Compromise in 1820 was arranged in this way. The conference report cannot be amended; it must be passed or rejected *in toto*. Thus members are often compelled to vote for many sections, or items, of a measure to which they are stoutly opposed, and "jobs" are often concocted in conference committee contrary to the public interest.

After the bill has passed both houses it then goes to the President, who may approve and sign it, in which case it becomes a law, or he may veto it (see pp. 243–244), in which case it is returned with the President's objections to the house in which it originated. That house, after entering the President's objections upon its journal, proceeds to reconsider the bill, and if two thirds agree to pass the bill it is sent, together with the President's objections, to the other house, and if the bill is approved by two thirds of that house also, it becomes a law. "In all such cases the votes of both houses shall be determined by yeas and nays and the names of the persons voting for and against any bill shall be entered on the journal of each house respectively." [1]

It often happens that the members of the party majority in control of the House are not united in the support of bills brought before the House. When the leaders of the party in the House wish to get the united support of the party members for a measure they seek to make it a subject for caucus action. If the caucus approves the bill as a party measure and decides that all loyal party members should support it, the bill then becomes a "caucus bill" and the solid party vote is brought to its support. If a member does not wish to to be bound by the caucus action he should give public notice to that effect or refuse to go into the caucus which is called to pass upon the bill.

A Caucus Bill

A caucus bill in America corresponds, in a measure, to a "government bill" in the English House of Commons, that is, a bill which is brought in by the Cabinet or Government, or the responsible ministry of the time. It is then expected that all members of the majority will vote for the bill to sustain the *Government*. If the bill were defeated it would mean that the Ministry would either have to resign or call a new election.

The legislative "rider" is sometimes employed by one

[1] Constitution, Art. I, Sect. 7.

house against the other, or by both houses against the President to coerce or induce the passage of measures. A "rider" is an unrelated piece of legislation attached to another legislative measure with the purpose of having it ride through on the merits of the measure to which it is attached. Riders are usually attached to appropriation bills. As these bills *must* be passed to supply money to keep the wheels of government going, it is thought the "rider" will not be thrown off from the bill, nor the whole bill defeated in order to defeat the "rider." The "rider" may be a brief amendment or a whole new bill having nothing whatever to do with the bill to which it is attached.

Legislative "Riders"

In 1820 the Senate attached the Missouri bill as a "rider" to the Maine bill coming up from the house, as a means of forcing the anti-slavery men in the house to admit Missouri as a slave state in order to get Maine in as a free state, and in 1855 the anti-slavery men in passing the Army Appropriation Bill in the house (in order to bring the Senate and the President to a different policy on the Kansas question) attached a rider providing that the President should use no part of the money appropriated to enforce the acts of the pro-slavery legislature in the Territory of Kansas. In 1879 the Democrats in control of the House sought to force the Senate to consent to the repeal of the Federal Election Law by attaching the repealing bill to a necessary appropriation bill. The Senate refused to let the "rider" pass. A "deadlock" occurred, Congress adjourned without making the necessary appropriations, and President Hayes had to call an extra session of Congress.

All parties have used this legislative device in the past, but it has become unpopular, and if either house or the President stands out against it, public approval will be accorded, while if important legislation were defeated because of an obnoxious "rider," public condemnation will be visited upon the body responsible for the "rider." This illustrates

the desirability of giving to the President the power to veto any item or part of an appropriation bill without vetoing all of it.

Powers of the two Houses

The Two Houses Coördinate in Legislation

The two houses are coördinate, of equal power in legislation, except that the Senate may not originate bills for raising revenue. But it may originate appropriation bills which make revenue bills necessary, and it may put onto a revenue bill any number of amendments, which really gives the Senate equal power with the House. As a matter of fact and of politics the Senate is rather more powerful than the House as a legislative body. Its members, as a rule, are older and more experienced in legislation. It is a permanent body and in conflicts with the House it can afford to bide its time and wait for the leadership and personnel of the House to change. As the Senate is a smaller body and accustomed to senatorial courtesy, its members can more easily stand together and act in unity.

In England the two houses of Parliament are not coördinate. The Commons is the supreme legislative body and the House of Lords is subordinate. The Lords serve only as a check on the Commons, with power to veto a measure for a time. But any bill which the Commons passes a second time becomes a law after the lapse of two years, despite any veto or objection by the Lords.

While our two houses are coördinate in legislation, each house has certain exclusive powers and privileges.

Exclusive Powers and Privileges of each House

To the House belong exclusively the powers, (1) to originate revenue bills, (2) to originate and prefer impeachment charges, (3) to elect the President in case the Electoral College fails to elect. The Senate may not participate in any of these functions.

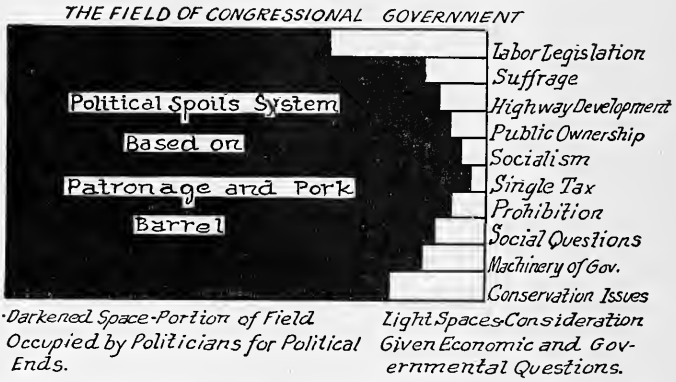
To the Senate belong exclusively the powers, (1) to confirm the President's appointments, (2) to approve or reject treaties,

(3) to act as a court in impeachment proceedings, (4) to elect the Vice President in case of failure to elect by the Electoral College. The House may not take part in any of these functions.

Patronage

Politics and Patronage: "Pork" and "Pie"

Patronage is the power to bestow offices and favors. Congressmen are not given the appointing power, but the President usually takes their recommendations for offices within their



A diagram showing to what extent many Congressmen give attention to political, personal, and local interests as against real public questions.

districts. Many Congressmen spend much of their time and energy in "playing politics," in seeking to get offices and favors for their friends and supporters, and in trying to get appropriations passed that will cause public money to be spent in their districts. The appropriations for government buildings in different parts of the country, for private claims, for the improvement of rivers and harbors, and for other governmental projects, have become a source of waste, extravagance, and log-rolling. Members, without any regard to the public welfare, seek to get as much of this money as they can for their own localities, and often will vote for a bill, however

extravagant and wasteful, if by it a good sum of the public money is to be spent among their own constituents. Members combine to vote for one another's local interests in passing these wasteful appropriation bills.

This is called "cutting the Congressional pie," or "distributing the pork." The whole amount to be appropriated for public buildings, for the improvement of rivers and harbors, and for private pensions and claims, is called the "Pork Barrel." The amount of "pork" a member brings home to his constituents depends upon the bargains he can make and on his position and influence with reference to the proper committees. His constituents are prone to forgive him even if he does sacrifice the interest of the whole country provided he gets a lot of money for their local benefit. So "pork barrel" combinations are made among representatives from different parts of the country by which this distribution of government money is carried out, without much regard to the interest of the country as a whole, — somewhat after the manner of "log-rolling." The National Voters' League says:

> The whole system of appropriating money for public buildings betrays the shameless manner in which public funds are squandered in order that political patronage may be distributed to communities which are either so lacking in moral consciousness as to be objects of pity, or else so frankly out for "pork" as to be objects of contempt. "Pork" is a national disease. It debauches both Congressman and constituency, and is the most subtle and sinister form of degenerating influence to which a government may become exposed. There is nothing in our governmental machinery so vicious and depraving as "pork."

Such abuses in government arise from time to time and public opinion must be relied upon to bring about their reform.

TOPICS AND QUERIES

1. What would be the objection to electing the representatives to Congress from a State as presidential electors are elected, all at large on a common ticket?

2. Show the political injustice of gerrymandering. What remedies can you propose for it?
3. Debate: "Resolved, that the American practice of requiring members of Congress to reside in their districts is not so good as the English practice of allowing a freer and wider choice."
4. What are the causes and remedies for "pork" legislation? How does such legislation affect both the Congressman and his constituents? How would you use the public funds squandered in this way?
5. Debate: "Resolved, that members of Congress are less to blame for pork legislation than their constituents."
6. Compare the committee system in the house of representatives with the committee system in the House of Commons. Read Bryce's *American Commonwealth*, Vol. I, Chap. XV, "The Committees of Congress"; Woodburn's *American Republic*, pp. 279–288.
7. How could saving be brought about by the "Budget System"? Would it help to save the "pork"? How?

REFERENCES

Consult the books named at the close of Chap. IV. Use also McLaughlin and Hart's *Cyclopedia of Government*, noting the articles on "Congress," "Speaker," "Whip," "Gerrymander," "Caucus," "Filibustering," "Cloture Rule," "Committee System," "Riders," "Pairing." Miss M. P. Follett's *The Speaker of the House*, H. B. Fuller's *Speakers of the House*, and McConachie's *Committee System of the House* are special volumes bearing on the topics of this chapter. Lynn Haines's *Your Congress* is a recent little book which throws much light on the inside working of Congress, on the methods and forces employed in the "game of politics," telling how "patronage," "pork," "politics" and "pull" work the congressional system. This is published by the "National Voters' League," which also publishes the *Searchlight*, a periodical which discusses the practical workings of Congress and seeks to turn the light of publicity on Congressional abuses and shortcomings. If one would keep posted on the real life of Congress one should use this material and read the Washington correspondence and the articles on the doings of Congress in *Collier's Weekly*, *The Outlook*, *The Independent*, and *Review of the Reviews*, *Current Opinion*, *The Literary Digest*, and similar magazines.

CHAPTER XVI

THE RELATION OF THE PRESIDENT TO CONGRESS: THE CABINET AND THE EXECUTIVE DEPARTMENTS

How the President may Influence Congress

Apart from his party leadership and the party coöperation of which we have spoken the President may influence Congress in various ways:

1. By his messages to Congress. Under Washington and John Adams, the President *addressed* the two houses of Congress at the opening of a session. This was a formal affair like the king's address from the throne, the President appearing in state and the members of the two houses marching in procession to the hall. Jefferson abolished this custom and sent in a written message as being more in harmony with democratic simplicity.[1] President Wilson, after more than a hundred years, revived the custom of speaking, not for form's sake, but as a more direct and effective way of impressing his views and policies upon Congress. He felt that in coming face to face with Congress he was brought into closer touch and into a better understanding with that body. President Wilson has addressed Congress not only in the annual message but at such special times as he has felt disposed.

2. By calling Congress into extraordinary session. The President may call Congress for a particular purpose. Congress is not bound to act upon his suggestion, but if it adjourns without acting he may call it into session again, and in this way he may "hold Congress down" to the work he would like to see accomplished.

[1] Jefferson's enemies said that this was done because he was not a good public speaker, though he was a very effective writer.

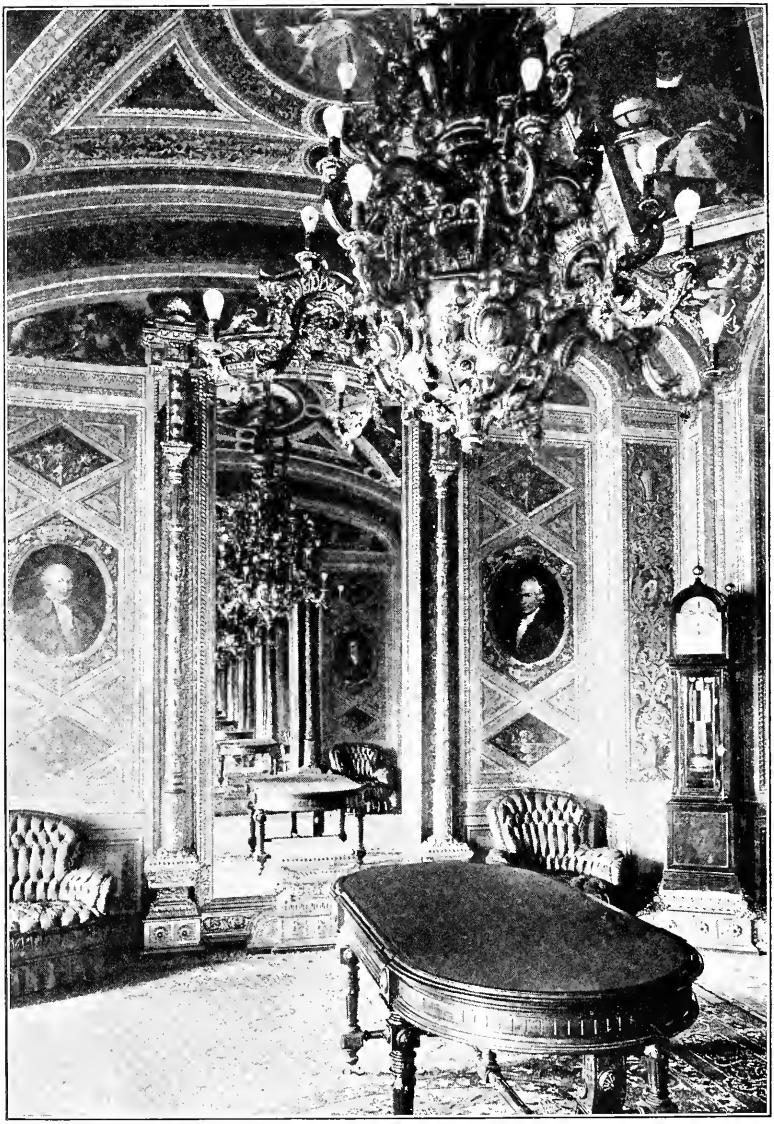
3. By his veto power. The knowledge which the President may give out that he will veto certain legislation may lead to its being modified to suit the President's views. The President might use this power for party or political reason, by letting it be known that he would veto or approve measures that certain members of Congress were interested in, as a means of influencing their votes on other measures. This would be an unbecoming kind of bargaining, or "log-rolling," in politics.

4. By communications, through the Cabinet, with congressional committees or their chairmen. Cabinet officers are not members of the legislature, as they are in England, and they may not appear on the floor of Congress to advocate their measures and recommendations. This is merely a custom, or law of the unwritten constitution; there is nothing in the written constitution to forbid it, and Hamilton, as Secretary of the Treasury, proposed to appear in Congress to explain and defend his financial measures, but Congress called for a written report instead. If Hamilton had appeared on the floor of Congress, the precedent might have been followed in later years. It may, of course, be changed at any time. But Cabinet officers may appear before the committees and use effective influence there by personal recommendations and arguments, as well as by private interviews with members of the committee. If the Cabinet officer succeeds in persuading the committee he is likely to win his cause.

5. By the use of the executive patronage. This refers to the President's power of appointment and his control of the offices. The President may give places to Congressmen or their friends if they will consent to support his policy in Congress, and he may withhold appointments from those who refuse. This is, of course, a form of bribery and may be a source of serious corruption, if a President is so unscrupulous as to attempt to promote legislation in this way. This would

The President and Patronage

Capitol Building, Washington, D. C.



President's Room at the Capitol, Washington, D. C.

lead Congressmen to vote not according to their own conscience and judgment as to the merits of a bill but according to the party or other interests. The President has millions to bestow in the form of offices and salaries. It was in this corrupt way that English kings, by the places and favors at their command, controlled Parliament and exercised executive tyranny.

How Congress may Influence the President

On the other hand Congress has various means of influencing the President:

1. By resolution, condemning or censuring him for a certain course. This may not lead the President to alter his course but it is likely to lead him to defend his policy, as President Jackson did against the censure of the Senate in 1833.

2. By an investigating committee. Such a committee may be appointed to inquire into the conduct of an executive department or to expose its misconduct, or to embarrass the President, and to get political campaign material against him. The committee may summon a Cabinet officer to appear before it. He may refuse to appear, as the Secretaries are responsible to the President and not to Congress. But the President may seek to avoid investigation and annoyance by coöperation with Congress if possible.

3. Congress may refuse legislation requested by the President as a means of causing him to yield to the wishes of Congress. This would be like "hitting back" at a President who had given notice of his intention to veto a bill as a means of bringing Congress to his terms.

4. By impeachment. A hostile Congress may watch closely for opportunities to bring impeachment proceedings, and the President will be careful not to give ground therefor. This is a heavy weapon to use and will be brought into use only in extraordinary cases. It is not likely to succeed when applied for political purposes.

5. Congress may by law restrict the scope of executive acts. The law may require a certain course of the President and his Cabinet officers, laying down a strict course of action and forbidding them to do what hitherto they had been left free to do. The President may veto such acts, but if they are passed over his veto, he is bound to obey them no matter if he thinks they are unconstitutional. He must enforce them until they are overthrown by the courts. He may seek to have a test case brought before the courts to bring about the overthrow of the objectionable acts, but he would be subject to impeachment if he violated them.

6. Congress holds the powers of the purse. It may withhold an appropriation necessary to carry out the President's policy, and by this means it may bring influence and pressure to bear on the President. If the President wished to buy territory, Congress could refuse the money. But while the President remains within the usual range of his constitutional powers, Congress is not likely to try to control him in this way.

7. By the use of the "rider" on an appropriation bill (see p. 296).

These weapons of defense and offense which the executive and legislative departments of the Government may employ against one another remind us that these departments of the government are frequently unable to act in harmony and that they are sometimes engaged in trying to circumvent and defeat one another. Under our system of a fixed term for President and Congress this condition frequently comes to pass, — when the President and Congress are of different parties. Many Americans think it would be better if we had the English system of the responsible ministry, by which the President might dissolve Congress and appeal to the people by a fresh election if it refused to sustain him and by which he would have to resign if the people sustained Congress. But the system as we have it under the so-called "separation of the

How Executive and Legislative are harmonized

powers" is coming to be more and more workable by disregarding the *theory* through the operation of party forces, and thus harmony between the legislative and executive branches is more regularly maintained. By party leadership and unity President and Congress work together, and the people, when they elect a President, are more disposed to elect with him, and maintain for him through his term a Congress that will sustain his policies. The people cannot so readily change the Senate to bring about this harmony, but with one third of the senate now subject to popular election every two years there is a marked tendency in this direction.

The Presidential Succession

The Vice President has two functions. One is to preside over the senate; the other is to succeed to the presidency in case the President dies. He is not a member of the senate and therefore he has no vote, except in case of a tie, which is very rare. His office is ceremonial, of some dignity and honor but of no power, and not of political importance except in the possibility of his succession to the presidency. The office is a constant subject of jocose remark, and it is said that to elect a man to the Vice Presidency is equivalent to retiring him to a place where he can do no harm. He has no responsibility and nothing to do except to preside in the Senate, whose proceedings he cannot in the least influence or direct. But should the President die, the Vice President becomes the most important man in the country. So, as Mr. Bryce says, he is "aut nullus, aut Caesar"; he is either nothing at all or the ruler of the land. The political party, when it nominates its national ticket, seems to expect with confidence that its candidate for President will not only be elected but will live out his four years. The delegates in convention take too little care in selecting a man for Vice President. They take into consideration the section of the country from which the candidate comes or the faction of

The Vice President

the party to which he belongs, using the office as a sop to the defeated faction in the contest for the presidency, but they do not carefully consider whether the man is fit to be President. Five times in our history the President has died in office and the Vice President has succeeded to his place. No man should be named for the second office whom the party and the country would be unwilling to have in the first.

The Presidential Succession

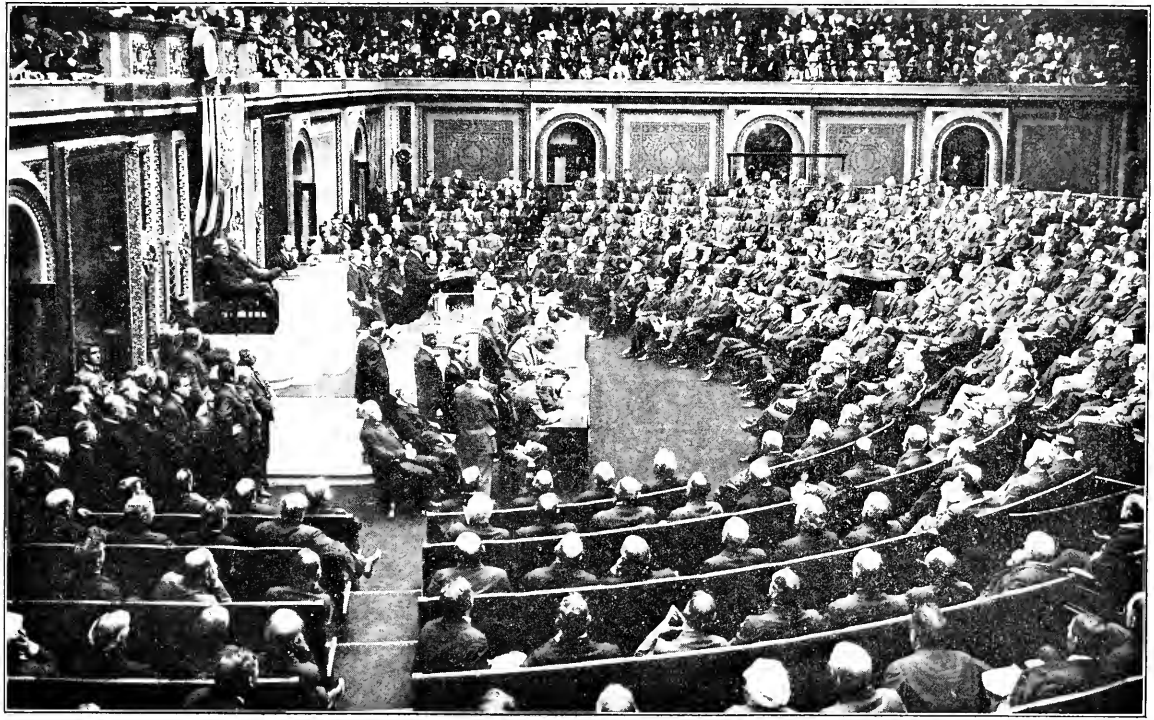
Congress may designate by law who shall succeed to the Presidency if both the President and Vice President should die in a single term. This has never yet occurred, but provision has been made for it. By a law of 1792 the president *pro tem* of the senate was to become President and after him the Speaker of the House. Objections arose to this plan. It would bring legislative leaders into the executive office and was not unlikely to bring a leader of a different party from the one chosen by the people, who could reverse the policies for which the people had voted. Also there might be months at a time in the recess of Congress or before a new Congress meets when there would be no Speaker of the House or president *pro tem* of the Senate.

In view of these objections Congress in 1886 passed the present *Presidential Succession Act*, which provides for the succession of the Cabinet officers in the following order: 1. Secretary of State. 2. Secretary of the Treasury. 3. Secretary of War. 4. Attorney General. 5. Postmaster General. 6. Secretary of the Navy. 7. Secretary of the Interior. The remaining three departments, — Agriculture, Commerce, and Labor have been made Cabinet departments since 1886, but have not been included in the succession to the presidency.

The Cabinet

The President's Cabinet consists of the ten heads of the executive departments, as follows:

The Secretary of State.	The Secretary of War.
The Secretary of the Treasury.	The Attorney General.



President Wilson Reading a Message to the Joint Houses of Congress Assembled in the Chamber of the House of Representatives

A Meeting of President Wilson and his Cabinet

The Postmaster General.	The Secretary of Agriculture.
The Secretary of the Navy.	The Secretary of Commerce.
The Secretary of the Interior.	The Secretary of Labor.

These heads of departments are appointed by the President, the Senate confirming his choice without question.

Functions of the Cabinet Officer

The Cabinet officer has two functions: 1. To preside over his department and to be responsible for its management by the control and direction of his subordinates. 2. To meet in council with the President and the other members of the Cabinet, to advise the President on all matters of public policy that may be brought up. The President and his Cabinet make up the Administration and they "put their heads together" in council to decide on what is the best course to pursue in the direction of public affairs. The members of the Cabinet are responsible to the President, and whatever policy is decided upon is the President's policy. He may retain or remove them at will; Congress cannot keep a Cabinet member in office nor cause his removal. The President is responsible to the nation for what the Administration does and in a Cabinet meeting his vote in any decision outweighs all the rest,—if he insists upon his own judgment.[1] The President may yield his own judgment to that of the majority, but if he does not see fit to do so and stands firmly by his own policy, then it is the duty of the Secretaries to yield their judgment and support the President in the course he decides to take. If any one of them cannot conscientiously do so he should resign and let some one take his place who will support the President.

Relation of the Cabinet Officer to the President

When Jackson's Secretary of the Treasury refused to carry out a policy in his department which the President desired (the removal of the deposits from the Second United States Bank) and also refused to resign, Jackson removed

[1] A story is told of the way Lincoln announced a Cabinet vote. "The vote stands 7 noes, 1 aye. The ayes have it." He had voted "aye" and meant to insist upon his Cabinet members supporting his policy.

him and appointed a Secretary who was in harmony with the President's policy and would carry out his will. It has been undisputed since Jackson's time that a Cabinet officer is subordinate to the President, and his policies may be controlled by the President.

The Cabinet in America does not stand or fall together as in England, but each individual member is appointed or removed separately, for whatever political or sectional support he may bring to the Administration. The President, of course, always shows personal deference and respect to the opinions of his Secretaries, often yielding his own views to theirs, and he seldom interferes with the management of their departments. But for malfeasance or inefficiency in a department the country would hold the President responsible, and when a public policy is to be carried before the country the Cabinet must be politically united; it must be "homogeneous" in opinion and purpose. Of course, the ten members may never all agree with the President or with one another on any subject, but when a decision is made opinions must be yielded and differences reconciled, or the Administration and the Cabinet would be divided and disrupted. In ordinary times a President makes up his Cabinet entirely from one party for this reason.

The Homogeneous Cabinet

The Cabinet as we now have it was not created by the Constitution. Each department is created by law, but the Cabinet as a council has grown up by custom. All the Constitution says about it is: "The President may require the opinion in *writing* of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." Thus all that seems to have been contemplated was that the President should consult the heads of the several departments separately, asking their advice in writing, and following this advice, or not, as he chose. Washington frequently pursued this practice.

The Constitution and the Cabinet

Each of the executive departments is divided into bureaus,

and each bureau into divisions. Each bureau and division has a chief. There are usually first, second, third, and fourth assistant, to the secretaries. The assistants are not so well known to the public, but are usually the more permanent officers in the departments who manage the administrative business. They are the connecting and continuing links between successive administrations. They have more expert knowledge of the details and subordinate work required, but it is seldom that an assistant secretary is promoted to the secretaryship, since the political character of the Cabinet member is of importance. Secretary Lansing, the first assistant secretary, was made Secretary of State upon Mr. Bryan's resignation in 1915 from President Wilson's Cabinet in an international crisis, a rather unusual promotion. It is not unusual for such an assistant to serve under successive Presidents of different parties. Their functions are not political and it may be noticed that the purely administrative and non-political functions of the Cabinet officer and especially of his subordinates are assuming larger proportions and importance.

Department Divisions

The Department of State

The Secretary of State is the leading officer in the Cabinet. He is sometimes called the *Premier* of the Administration. He is the President's "right-hand man," sitting in the seat of honor at the right of the President at the Cabinet table. He is usually a political figure of commanding importance and is often chosen for his political influence and party leadership. President Lincoln appointed Secretary Seward, his chief rival for the presidential nomination, and President Wilson appointed Mr. Bryan, whose influence and leadership in the Democratic party had promoted President Wilson's nomination and election. Mr. Bryan was a powerful political aid in rallying a united party to the support of President Wilson's policies.

It is the duty of the State department to receive and record acts of Congress, to sign and to attach the great seal of State,

and to make public the proclamations of the President. His department is the organ of communication between the national Government and the States upon the one hand and between the national Government and foreign powers on the other. The Secretary of State is the minister for foreign affairs. He manages the *Diplomatic Bureau* and the *Consular Bureau*, appointing, under the President, ambassadors, ministers, and consuls to foreign countries, and receiving and introducing to the President like officers from them. The spoils system is being eliminated from the diplomatic and consular service, as recent events have demonstrated the need of trained and expert officials in the foreign service of the country.

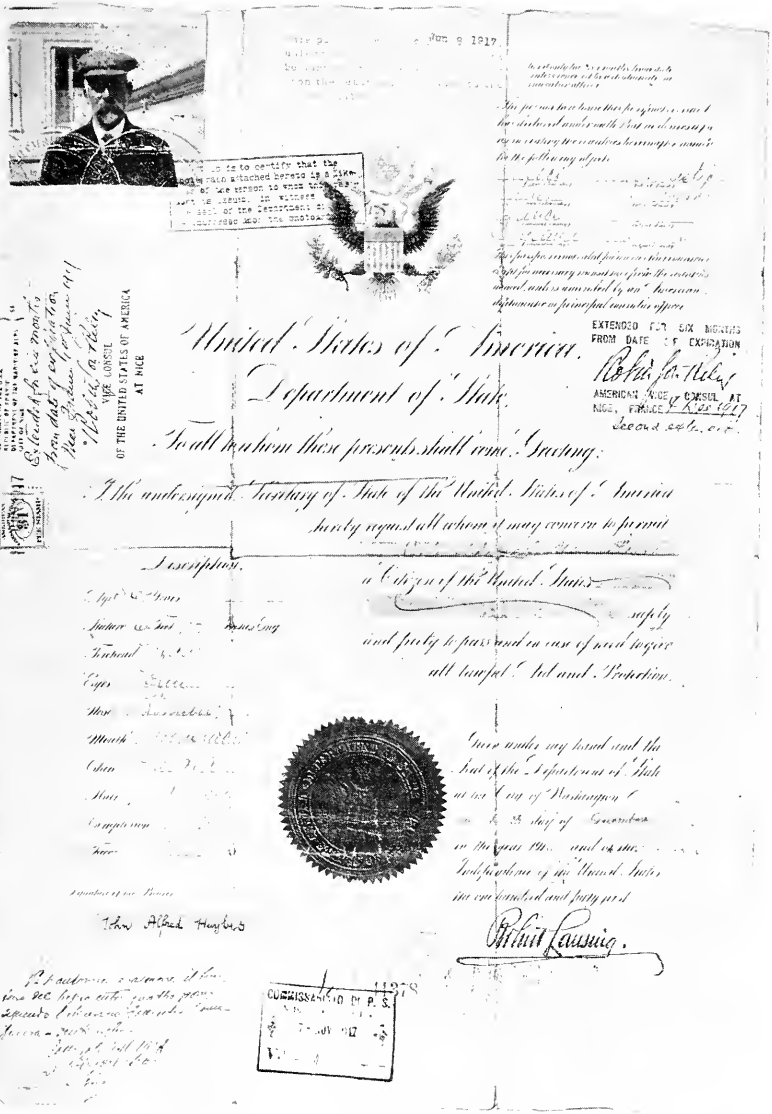
Work of the State Department

Ambassadors and Ministers

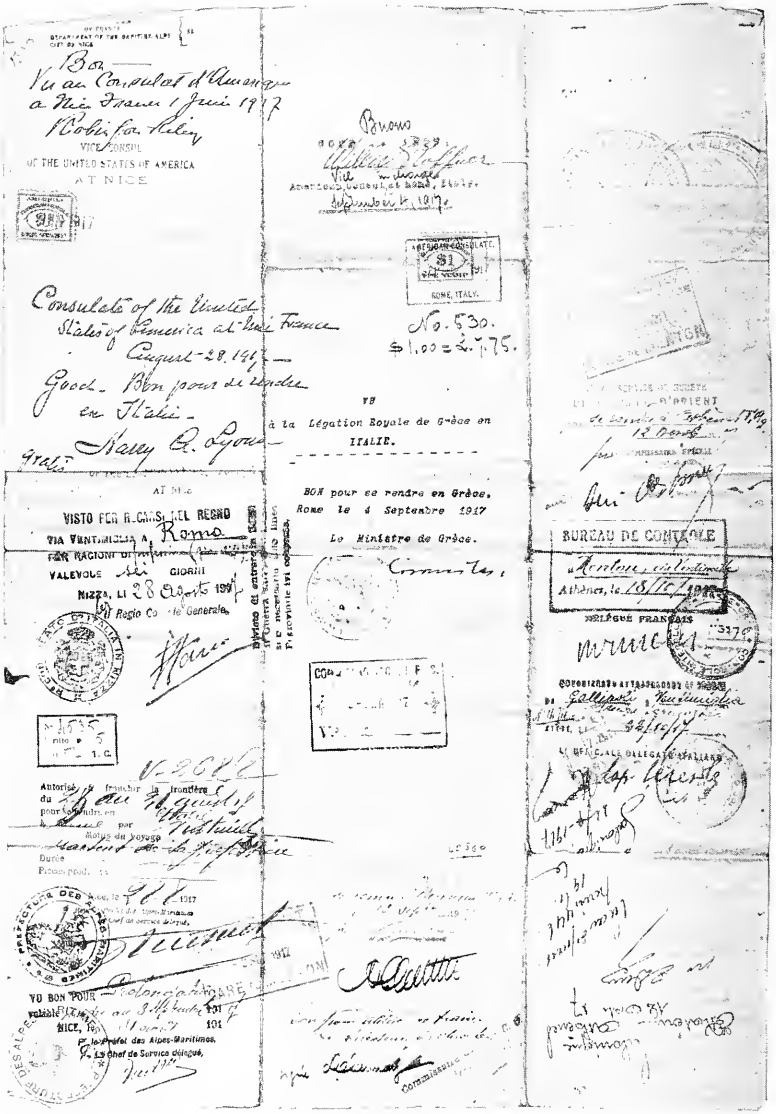
There are several grades of the Diplomatic Service, the order being Ambassador, Minister Plenipotentiary and Envoy Extraordinary, and Minister Resident. The *Chargé d'Affaires* is a diplomatic subordinate who has temporary charge of diplomatic affairs during the absence or illness of his superior officer. In eleven of the principal countries of the world the American diplomatic representative is known as Ambassador.[1] This title serves to give equal rank and recognition with the ministers of other countries. These American representatives at foreign capitals are charged with the duty and responsibility of safe-guarding the interests of their country, cultivating friendly relations, protecting American citizens, and using their good offices to promote the interest of Americans who may be traveling or residing abroad. They deal with international affairs, questions of public law, and controversies that may arise between nations. They should never take part in any way with the politics or internal differences of the country to which they are accredited.[2]

[1] Great Britain, Russia, Germany, France, Italy, Austria-Hungary, Mexico, Japan, Spain, Turkey, Brazil,

[2] The salaries of our diplomatic representatives vary from $4000 for Ministers Resident to $17,500 for Ambassadors. Other countries, as a rule, pay much more. The social and diplomatic expenses at foreign capitals are so great that only men who can draw liberally upon their



An American Passport, with its Extensions of Time and Endorsements



Reverse Side of Passport

The Consular Service is another branch of Government service in foreign countries. The *Consul* deals with commercial or business affairs. He seeks to cultivate trade and attends to certain business and personal interests of our citizens abroad. He seeks to aid his Government in carrying out its immigration and naturalization laws, and to collect information on trade, industries, and markets. There are several grades in the consular service, — Consuls-General (in important foreign capitals) — Consuls, and Consular Agents. Consular appointments were formerly made as a reward for party and political service, but now civil service examinations are held for Consular Agents, and promotions and appointments to the higher posts are made more generally on a basis of fitness and merit. Men are sought for these posts who have had special training in languages and business experience.

Bureau of Archives and Citizenship

The Department of State also has charge of the Bureau of *Archives* and the Bureau of *Citizenship*. The former is charged with keeping the records and foreign correspondence of the nation. The latter issues passports or certificates of citizenship (upon the payment of a fee of one dollar) to persons who desire them while living or traveling abroad. Passports may be issued not only to persons who live in the United States but to the inhabitants (subjects) of our island possessions and to aliens who have declared their intention to become citizens of America.

Department of the Treasury

This department has charge of the national finances. It oversees the public funds, the revenue laws, the currency and banking laws, and all auditing of accounts. The Bureau of Engraving and Printing, the construction of public buildings,

private incomes can afford to accept these appointments. The honor and distinction, together with the opportunity for important service, are held to be the chief compensation.

the life-saving service, the marine hospital business, also fall under the administration of this Department.

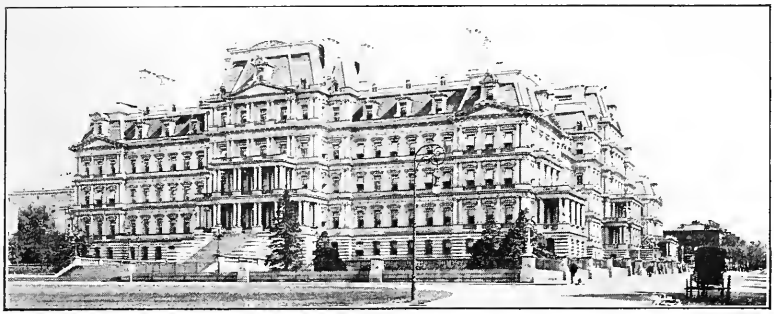
The *Treasurer* of the United States (a different officer from the Secretary of the Treasury) is the custodian of the Government funds. It is his business to receive and disburse public moneys on the proper warrants. Besides the treasury at Washington there are subtreasuries at New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco which are agencies for the receipt and expenditure of public money. Certain national banks throughout the country are now also designated as Government depositories and they receive from Postmasters the Postal Savings deposits.

The *Register* of the Treasury issues and signs all United States bonds and all transfers of bonds and funds. The *Comptroller* of the Treasury has the oversight of the national banking system. He oversees the organization of a new bank, sees that its capital stock is fully paid, that United States bonds to secure its circulating notes are deposited in the United States Treasury, and that there are regular and careful examinations of all national banks and that public reports are made as to their condition. Numerous bank examiners throughout the States are appointed for this purpose, their salaries being paid by charges (fees) upon the banks.

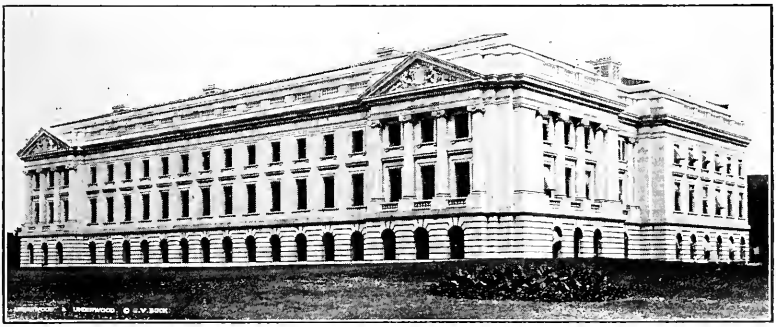
The Comptroller also attends to forms of accounts. He may be called upon to make important decisions as to the validity of payments, and the disbursing officer is bound by these decisions unless a court reverses them. A number of *Auditors* are engaged in examining and settling claims. No public officer may legally pay out money except on the proper vouchers, and he cannot be credited with the payment until his account has been audited and approved.

The Mint and its Director

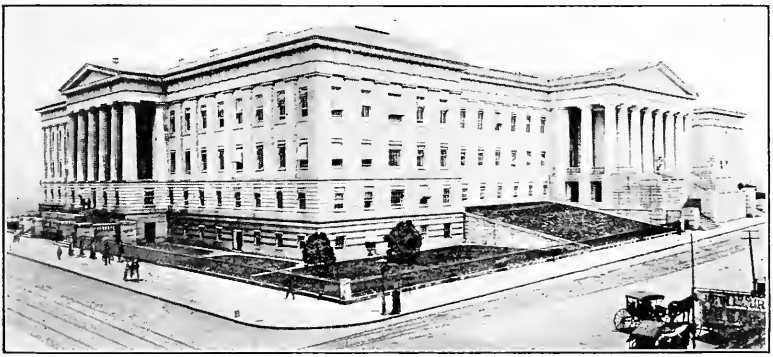
In this department there is a *Director of the Mint* to administer the coinage laws and assay offices. Mints for coining money are established at Philadelphia, Denver, San Francisco, and New Orleans. The Assaying Offices are for determining



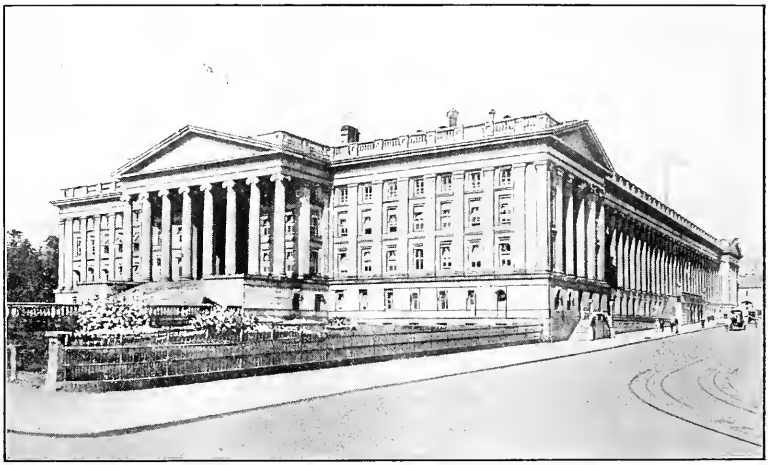
State, War, and Navy Departments, Washington, D. C.



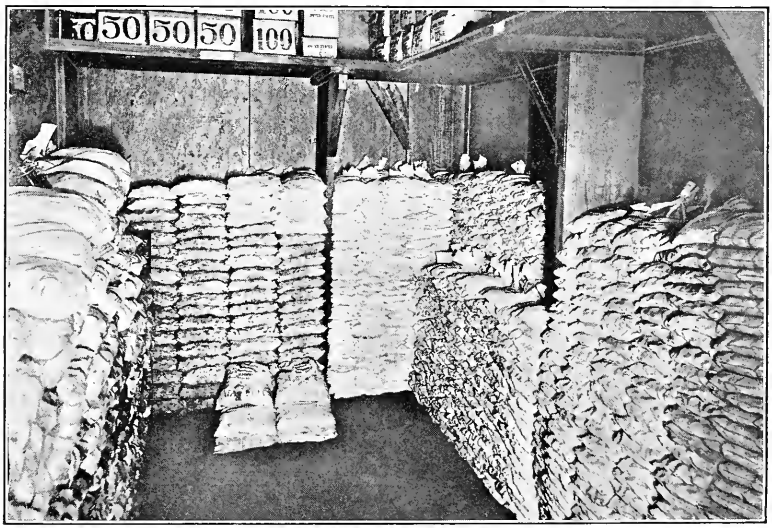
Department of Agriculture, Washington, D. C.



Patent Office, Washington, D. C.



The Treasury Department, Washington, D. C.



A Silver Vault, U. S. Treasury, Washington, D. C.

the fineness and purity of bullion. They exist in New York, St. Louis, Deadwood, Helena, Boise, Carson City, Salt Lake, Seattle, and Charlotte.

The *Bureau of Engraving and Printing* attends to the engraving and printing of all forms of government notes, bonds, coins, banknotes, all internal revenue stamps and postage stamps, drafts and checks, and forms of Government certificates.

There is a *Supervising Architect* in this department whose duty it is to select and purchase sites for Government buildings, — Federal court house, post office buildings, custom-houses, etc. He awards contracts and attends to the leasing of buildings.

A *Secret Service* is connected with the Treasury Department consisting of a number of detectives who are employed to detect frauds and crimes against the Government, such as counterfeiting and selling "green goods" and "moonshining."

"Moonshining" relates to the illegal distilleries that are sometimes run in concealed places, usually in backwoods and mountain regions, to escape the internal revenue tax on liquors. "Moonshine whisky" is usually made at night, and it occasionally happens that United States revenue officers have a hard time running these stills down and putting them out of business. "Green goods" men are the counterfeiters who run their outfits in dark and out-of-the-way places, often in the larger cities, selling their "goods" at a low rate on the dollar. Their work is at times so skillfully done that even the expert agents in Washington have difficulty in detecting the counterfeit fraud. But as a rule with n a comparatively short time the United States Government succeeds in running down and imprisoning these outlaws and criminals who defy its authority.

The War Department

This department has charge of all army affairs, the national defense, seacoast fortifications, river and harbor improvements and obstructions to navigation, the National Military

Academy at West Point, army posts, camps and schools of instruction, military parks and cemeteries. The War Department has many bureaus, with their various officers and chiefs.

The school at West Point was founded in 1802. One student, or cadet, is appointed to West Point from each Congressional District, usually on the nomination of the district's representative in Congress. All candidates for admission must pass rigid examinations, mental and physical. Each cadet has $600 a year for his expenses during the course of four years. The graduates are numbered in rank according to their class standing and are made second lieutenants in the army. Those of the highest standing may have appointments in the engineering corps if they choose. The superintendent and teachers in the academy are officers in the regular army.

The General Staff

In order to unite the Bureaus under one general directing body and to secure harmony and efficiency in the administration of the many activities of the War Department, Congress in 1903 created the *General Staff*. This consists of officers taken from all arms of the service, — infantry, cavalry, artillery, engineers, etc. It is the business of this body to supervise all military agencies, the officers in charge of troops (line officers) as well as those in charge of bureaus (staff officers). The Chief of Staff is at the head of this organization and of the army. The Chief is always an army officer and he is appointed by the President for a term of four years. The Bureau of Supply now combines what was formerly the *Quartermaster's*, the *Commissary's* and the *Paymaster's* Bureaus. The work of this division is to clothe and feed the army, pay it, and provide for its necessities. To be able to move an army, to provide it with food and shelter, not to speak of comfort, is in large part the measure of a nation's success in war. Success in war depends upon success in administration and management. The General Staff directs

many other agencies necessary in the conduct of war — the medical service, inspection of posts, signal service, ordnance service, aviation service, insular service, etc.[1]

The Navy Department

The Navy Department, created in 1798, like the War Department, has its several *bureaus*, — of *Navigation*, *Yards and Docks*, *Equipment*, and *Ordnance*. As in the War Department, Naval officers are in charge of these bureaus. The names of the bureaus will serve to indicate the matters in charge of each. The Navy also has its law officer (Judge Advocate General). The Naval Academy at Annapolis, Maryland, corresponds to the military school at West Point, and appointments to it are obtained in the same way. The Naval Academy was founded in 1846, while the noted historian, George Bancroft, was Secretary of the Navy. The midshipmen are given instruction in gunnery, naval construction, engineering, mathematics, international law, and modern languages. After the four years course the "middies" are sent to sea for two years and then receive subordinate appointments in the navy.

The Department of Justice

This department was not created until 1870 and is presided over by the Attorney General, who was, however, a member of the first Cabinet. The Attorney General is the legal adviser to the President and he represents the United States in cases before its courts. He has supervision over United States Attorneys and marshals. He, or one of his subordinates, institute prosecutions and proceedings against persons and corporations charged with violations of United States Law.

The Secret Service

The Government has a Secret Service whose business it is to punish and prevent violations of the law. It works on

[1] See an article on "Army Organization," by C. D. Wilcox in *Harper's Magazine*, November, 1917.

cases where a secret detective service is needed. For the Post Office Department it detects mail thefts and robberies; for the Interior Department, it exposes pension frauds and frauds in land sales and land claims; for the Treasury Department, it hunts out violations and evasions of the tax laws and coinage laws, such as smuggling, moonshining, and counterfeiting. It keeps track of all known smugglers and their schemes, and its agents in foreign countries report to our customs officers unusual purchases of jewelry, silks, laces, and other dutiable goods whose owners are likely to try to get them into the country without paying duties. Secret Service agents protect the President from attack or injury. The Department of Justice, which prosecutes the law violators, has a secret service of its own, and especially in time of war its activities are vigorous and effective in arresting spies; in detecting the schemes of alien enemies within our borders; finding correspondence and documents to expose the crooked diplomacy and plots of the enemy; preventing sedition and treasonable utterances, and protecting the country and the Government from secret and lurking foes.

The Post Office Department

The Postmaster General presides over this department. He has general charge of postal affairs. All postmasters are his subordinates whom he appoints and may remove, subject to the control of the President.[1] The four Assistant Postmasters General supervise different departments of the postal service.[2]

The Department of the Interior

This department was created in 1849. In numbers its employees rank second only to the Treasury Department, and in services to the people it is second only to the Post Office

[1] Post offices paying less than $1000 are not in the presidential class and are managed by a separate bureau.

[2] For recent services and activities of the Post Office Department see p. 78.

Department. It has charge of the following affairs of the national Government: (1) Public lands; (2) Indian affairs; (3) Pensions; (4) Patents; (5) The geological survey.

General Land Office

The *General Land Office* has charge of all public lands and their survey and disposal, and of all forest reserves. The national policy towards public lands is a large and important topic in American history.

Indian Affairs

Indian affairs do not now require as large an amount of Government attention as formerly. Indian lands have been largely "alotted in severalty" to individual members of the tribes, and the policy now being pursued will soon extinguish all Indian tribes and merge their members into the common body of American citizenship. The Federal Government maintains several schools for the education of the Indians, the best known being the one at Carlisle, Pennsylvania.

Pension Bureau

The *Pension Bureau* is under the Interior Department. This involves a vast amount of business. Pension payments involve the largest single item of national expense to the national Government. The total expense for pensions from 1789 to the Civil War did not equal one half of what is now expended every year. The Commissioner of Pensions reported in 1915 that there were, fifty years after the close of the Civil War, still 900,000 names on the pension rolls, and a late Congressional appropriation for pensions was $162,000,000.

All examinations and adjudications of claims fall within this bureau, and there are many pension agencies and thousands of medical examiners throughout the country connected with the bureau. Pensioners are paid in nearly every city and village in the land through the pension agencies, whose officers send the vouchers to the pensioners which are cashed by local post offices and banks.

In the World War a system of war insurance has been substituted for pensions, by which the soldiers may be insured at a low cost. If disabled they are assured a fair income; if killed their dependents receive a liberal support.

Bureau of Education

The *Bureau of Education*, established in 1867, has a Commissioner whose duty it is to collect and distribute statistics and information concerning the educational facts, methods, and institutions of the country. Education is chiefly a State function. The nation has no schools except for special national purposes (military, naval, Indian). The colleges of Agriculture and Mechanical Arts are controlled and administered by the States, but are assisted by the United States. The Commissioner of Education has the distribution of the the funds appropriated for these schools.

Geological Survey

The *Geological Survey*, established in 1879, is in the Department of the Interior. Its Director classifies the public lands, examines their geological structure, their mineral resources and mineral products, and surveys the forest reserves. Topographical and geological maps are prepared by the Bureau, and in connection with the Bureau of Mines (established in 1911), mine accidents are investigated with a view to prevention, ores and explosives are made known, mineral fuels and structural materials are tested, and waters, on the surface and underground, are investigated.

Department of Agriculture

This department has existed since 1862, but was not made a Cabinet Department until 1889. It controls the *Weather Bureau*, the *Bureau of Animal Husbandry*, the *Bureau of Plant Industry*. The first forecasts the weather and gives notice of storms, cold waves, heat waves, frosts, and floods. The second inspects animals and meat products, inspects vessels offered for the transportation of animals, quarantines against diseases among live stock, and reports means of improving the animal industries of the country. The third considers plant life in relation to agriculture. It studies the diseases of plants and seeks to prevent them; it carries on demonstration farms in efforts to secure crop improvement and better methods of farming. Its agents explore foreign

countries for new plants and seeds and fruits, and for better methods in planting, harvesting, handling, and marketing.[1]

The department also has a *Bureau of Forestry* and a *Bureau of Chemistry*. The first seeks to give information on conserving all forest lands, on forest planting and tree culture, and the prevention of forest fires. The Bureau of Chemistry investigates fertilizers, agricultural products, and foodstuffs. It seeks to enforce the Pure Food Law of 1906 by examining foods and drugs and imposing penalties for adulteration or misbranding.

Department of Commerce

This department was made a separate department in 1903. It is charged with promoting commerce, mining, manufacturing, shipping, fisheries, and transportation. The department has under its charge (1) the *Bureau of Corporations*, which may investigate the conduct of any corporation engaged in interstate or foreign commerce (except railroads); (2) the Bureau of Foreign and Domestic Commerce, charged with collecting and publishing statistics on these subjects and with promoting the commercial interests of the United States; (3) the *Bureau of Lighthouses*, to maintain protective signals; (4) the *Steamboat Inspection Service*, to inspect and license vessels to promote safety in navigation; (5) the *Census Bureau*, charged with compiling all the varied information contained in the decennial census; (6) the *Bureau of Fisheries*, charged with the propagation of useful food fishes, the investigation of fishing grounds and the care of Alaskan salmon fisheries and seal herds; (7) the *Coast and Geodetic Survey*, charged with surveying and charting the coasts; (8) the *Bureau of Navigation*, charged with overseeing the commercial marine, issuing licenses, and collecting tonnage taxes; (9) the *Bureau of Standards*, charged with testing and comparing all standards used in scientific investigations, in commerce and in educational institutions, with the standards adopted and recognized by the Government.

[1] See pp. 79–80.

The Department of Labor

In 1913 the Department of Labor was made a separate department. It was combined with the Department of Commerce from 1903 to 1913. The object of its creation was "to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." In this department have been placed the *Children's Bureau*, the *Bureau of Labor Statistics*, the *Bureau of Immigration*, and the *Bureau of Naturalization*. The Bureau of Labor Statistics is charged with the duty of collecting and reporting once a year "full and complete statistics of the conditions of labor and the products and distribution of the products of the same." The Children's Bureau, established in 1912, investigates all matters pertaining to the welfare of children and child life.

Independent Bureaus and Institutions

Besides those mentioned under the various executive departments there are a number of independent bureaus and institutions:

The *Smithsonian Institution*, established in 1846, by the will of James Smithson, "for the increase and diffusion of knowledge among men." It seeks to promote original scientific research.

The *National Museum*, organized to preserve objects of art, collections, and specimens relating to geology, ethnology, and mineralogy.

The *Civil Service Commission*, charged with conducting the competitive examination of applicants for appointment to the classified civil service.

The *Interstate Commerce Commission*, of seven members, each receiving an annual salary of $10,000, for terms of seven years. This Commission, one of the most important under

the Government, was first established in 1887, and its powers were enlarged in 1906 and 1910. It is composed of seven members, appointed by the President and confirmed by the Senate. It has power to fix *maximum* railway rates for freight and passenger traffic and to declare what rates are "reasonable." The Commission regulates all the inter-state business of what is known as "common carriers," — i.e. railways, trolley lines, freight cars, pullman sleepers, express companies, telephone and telegraph companies. If shippers complain of abuses, the Commission may investigate and obtain some remedy. Formerly there were discriminations in rates, secret rebates to favored corporations, and abuses in charges. Railroad companies owned stock in coal mines and stone quarries and gave their own companies special freight rates. These things are now illegal and punishable. Thus the Government through this Commission regulates the carriers and seeks to obtain fairness and justice to the public.[1]

The *Federal Trade Commission* consists of five members, appointed for terms of seven years by the President and the Senate. The Commission is authorized to investigate the methods of any person, partnership, or corporation not engaged in banking or railway business which has been or is using any unfair method of competition in commerce, if action to stop such method "would be of interest to the public." This power is subject to review in the Federal Courts.

The *Government Printing Office*, charged with the printing, binding, and press work on all Government publications.

The *Library of Congress*, a great reference library, the third largest collection of books in the world.

[1] For the period of the World War the Government has taken upon itself the operation and control of the Railroads and placed them under the Secretary of the Treasury. Rates, wages, meeting expenses, paying dividends on stock, and the general management of the roads is now the business of the Government. Whether this is to be a permanent policy will probably not be determined until after the war is ended.

TOPICS AND QUERIES

1. What are the advantages in having the President and Congress in party harmony? What causes a lack of harmony?
2. Are the opposition party leaders in Congress justified in trying to "put the President in a hole"? Why do they seek to do so?
3. Explain the evil results that come from the President's inducing members of Congress to support his policies by allowing them to control appointments to office.
4. To what extent is the President justified in attempting to control, or lead, the action of Congress? Show how the relation of the President to Congress has changed since Washington's time. How do you account for the change?

Notice the topics and queries at the close of the preceding chapter.

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CHAPTER XVII

THE JUDICIARY

We have considered the executive and the legislative divisions of our government: the judiciary is the third division. Under the Old Confederation there was no national judiciary. Law suits were attended to in the States and disputes between the States were settled by Congress or by a committee of Congress. One of the most important changes made by the new Constitution came from making this "Constitution and the laws and treaties made in pursuance thereof the supreme law of the land" and in authorizing the erection of courts for trying, condemning, and punishing men for violating national law. It was this fact more than anything else that made the new government a *real* government and made the citizens of the State also citizens of the United States and subject to its jurisdiction. Any laws the United States might pass would be a dead letter if there were no courts to expound their meaning or put them into operation by a system of pains and penalties.

"The Supreme Law of the Land"

Under the Confederation the United States had to rely upon the States for the performance of these functions. If the Tories were to be restrained or restored to their estates; if debts due British merchants were to be collected; if our treaty agreements were to be enforced; or if anyone robbed the mail, counterfeited money, or threatened Congress with violence, there were no national courts by which these things could be attended to or the criminals brought to justice. The State courts had to be called on for assistance in carrying

Lack of Law-enforcing Power in the Courts under the Confederation

out the law, and these were often ineffective, as the States were not anxious to have the national powers asserted and increased. No influence has been more powerful for *nationalization*, for establishing and enlarging the powers of the national Government, than the work of the judiciary in the operation of the national courts. The interpretation of the Constitution by the courts, and the notable decisions of John Marshall, the great Chief Justice (1801–1835), did more to reduce "States' rights" and to exalt national power than any other influence in the early history of the Constitution, in the days when the new government was on trial in its experimental period.

National Law operates directly over Individuals

It was not only the greater powers of Congress and the increased vigor of the Executive which made the new government more effective than the Old Confederation and enabled it to assert its authority and to live in the face of a disposition in the States to resist that authority and dissolve the Union, but the national judiciary has done its full share in this direction. The greater power of the new government came not from giving the United States the power to "coerce a State" or to veto the acts of the States. Both of these powers were proposed, but they were denied to the United States by the convention. But when the United States was empowered *to enforce its own laws through its own courts*, then vetoing a State law or coercing a State became unnecessary. If a State passes an act contrary to the national Constitution, the courts of the United States declare it unconstitutional; it is then no law at all and no one is bound by it. And if the government of a State, or the citizens of a State, attempt to resist the laws of the United States the United States Government may then lawfully proceed not to "coerce a State" but to suppress its own citizens in insurrection. So, through the courts, backed by the executive power, the United States acts directly upon its citizens. The citizen owes allegiance not only to the State but to the United States.

Kinds of Federal Courts

The judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress may from time to time establish. The small States did not wish to allow the creation of any lower national courts. They claimed that nearly all the legal business would belong to the State courts and there would be but little for the national courts to do. It was thought that the courts of the United States would be only *appellate* in their jurisdiction; that is, they would try only such cases as were appealed from the State courts, and it was contended that the Supreme Court would be able to attend to all such cases. The growth of national interests and national law was not foreseen.

Where is the Judicial Power vested?

The Justices of the Supreme Court and also the Judges of the inferior courts are appointed by the President and confirmed by the Senate. The Justices of the Supreme Court are now nine in number (originally six), a Chief Justice with a salary of $15,000 and eight Associate Justices with salaries of $14,500 each. The judges of the courts hold their offices during life, or good behavior. They are removable only by impeachment. The compensation for their services may not be diminished during their continuance in office. The judge should be independent and not be led to rely on the favor or power of, or be subservient in any way to, any other arm of the government.

Appointment, Tenure and Compensation: Independence of the Judiciary

There are three classes of Federal Courts: 1. The Supreme Court. 2. Circuit or Courts of Appeal. 3. District Courts.[1] The Supreme Court is required by the Constitution. The creation of other courts was left to the discretion of Congress. There are now twenty-nine United States Circuit Judges, and ninety-one District Judges. The Circuit Judges have a salary of $7000, the District Judges $6000. A United States

Classes of Federal Courts

[1] There is also a Court of Claims, erected after the Civil War to pass upon claims against the United States Government.

judge who has served at least ten years may retire at the age of seventy and continue to draw his full salary for the rest of his life.

Work of the Federal Courts

Kinds of Cases coming under Federal Courts

There are several kinds of cases coming within the jurisdiction of the Federal courts. In general they were intended to be only those relating to the peace and common interest of the Union and interstate and foreign affairs, such as cases affecting ambassadors and consuls, sea cases touching prizes and piracy, and controversies to which the United States is a party or between two or more States, or between a State and citizens of another State, or between citizens of different States.[1] This left the great body of ordinary law cases to the State courts. But the general provision was made that "all cases of law and equity" to which the Constitution, laws and treaties of the United States apply may be tried in the United States courts. Under this provision the scope of national powers and jurisdiction has been greatly enlarged. A case arising in a State court may be transferred to a Federal court if either party to the suit questions the decision of the State court and if the case is one to which national law applies.

When Cases may be transferred from State to Federal Courts

The rule for transferring cases from State to Federal courts was laid down by the Judiciary Act of 1789. If the State court has decided *against* the validity of a Federal law or authority or if a State court has decided *in favor* of a State law or authority which is held to be contrary to the Constitution and laws of the United States, or if the State court decision is against any right or privilege which either party to the suit claims for himself under the laws and Constitution of the United States, then the case may be transferred to the Federal court for trial or review. Thus the Federal court has a chance to assert its final authority and vindicate the national

[1] See Const., Art. III, Sect. 2.

power. The principle is that State construction unfavorable to Federal authority may be reviewed by Federal construction, while State construction favorable to Federal authority needs no review, the Federal authority being already vindicated.

The Federal authority is the final judge of the extent of its own powers and within its legal sphere (as the Supreme Court may define it) the United States law operates of its own right and no State decision or authority may resist it.[1]

At first a citizen of one State was allowed to sue another State in a United States court. But the Eleventh Amendment now prevents this. It was not expected that the Constitution would be so construed as to allow a citizen to sue a State, — that would tend to violate the independence and dignity of the State. But this right of the citizen as against a State was asserted by a decision of the Supreme Court in the celebrated case of Chrisholm *vs.* Georgia, decided in 1793. Chrisholm, a citizen of South Carolina, sued Georgia in the United States court on a claim. Georgia refused to appear in court, whereupon the Supreme Court, Chief Justice Jay rendering the decision, construed the Constitution in such a way that the national authority, by implied powers, became greater than was expected. This offended and alarmed the people of the States. They did not wish to have their "sovereign States" (as they were then thought of) dragged into an outside court by private plaintiffs. So the eleventh amendment was quickly adopted, and declared in effect in 1798, which provides that the judicial power of the United States shall not be construed to extend to any suit against one of the United States by citizens of any other State, domestic or foreign.

The Eleventh Amendment: Chrisholm *vs.* Georgia, 1793

Under the shelter of this amendment several States have been able with impunity to repudiate their debts. The national Government cannot compel a State to pay its debts,

[1] A person arrested by a Federal officer may not be released by a State court on a writ of *habeas corpus*. See Booth *vs.* Ableman, 21 Howard 516.

and no State can be sued without its own consent and then only in its own courts. If State bonds held by citizens of foreign countries were repudiated we might get into difficulty with foreign powers on this account. So it has been claimed that in all matters where our relations with foreign powers are involved the jurisdiction of the United States should be supreme. If State bonds held by citizens were transferred to a State, payment on them might be enforced in the United States courts, since one State may sue another in the national courts.

Other Cases arising in Federal Courts

Other kinds of cases that may come up in Federal courts are those arising from controversies (*a*) between two or more States; (*b*) between citizens of different States; (*c*) between citizens of the same States claiming lands under grant from different States; (*d*) between a State or its citizens and a foreign country or its citizens.

No Common Law Jurisdiction

The jurisdiction of the Federal courts is statutory. That is, their jurisdiction is not derived from common law, — from precedents, former decisions, and the law of custom, — but from the Constitution and the statutes made in accordance with the Constitution. Their powers are to be found in the written law, not in the general principles and usages of law.

Conflict of Laws Prevented

A Federal law applicable to a case prevails in that case against any State law, and whether a Federal law applies is to be decided by a Federal Court. This prevents any clashing of authority between State and Federal courts, and the two jurisdictions work together in harmony over the same people at the same time. If a Federal court has occasion to apply State law in any case, it always follows the former decisions of State courts. National judges always respect the decisions of State judges on State law. A Federal act cannot impose functions and duties upon a State court; the State may refuse to accept and discharge these duties. The Federal law must supply its own officers and machinery.[1] The first fugitive slave act (1793) relied upon State courts and officers for its execu-

[1] See Prigg *vs.* Pennsylvania.

tion and for that reason, after the anti-slavery spirit arose in the free States, it became a dead letter; many States refused their help in carrying out the law.

In each of the United States District Courts there is a United States District Attorney who prosecutes violations of the law in his district. Each district has a United States Marshal who does such work as is performed by a Sheriff in a State court. He arrests offenders and executes the orders and carries out the decisions of the court. Each court also has a clerk, appointed by the court. The District Attorney and the Marshal are appointed by the President.

United States Attorneys and Marshals

Power to Declare Legislative Acts Unconstitutional

The most important power of the judiciary, from a political point of view, is that of declaring legislative acts unconstitutional. When this is done the acts are "null and void," and of no force, as if they had never been passed. This power may be exercised by the Federal judiciary not only toward acts of Congress but toward acts of the State legislatures. Much discussion has been indulged in over the question as to whether the framers of our Government intended to confer this important power on the courts. In 1803 in the celebrated case of Marbury *vs.* Madison, Chief Justice Marshall explicitly declared for the first time that an act of Congress which, in the judgment of the Supreme Court, violated the Constitution, was null and void.

In the notable Marbury decision in which this doctrine was laid down Chief Justice Marshall said:

"The powers of the legislature are defined and limited: that the limits may not be mistaken or forgotten the Constitution is written. To what purpose are powers limited and to what purpose is that limitation committed to writing if those limits may at any time be passed by those intended to be restrained? The distinction between a government of limited and one of unlimited powers is abolished if those

limits do not confine the person on whom they are imposed. . . . Certainly all those who have framed written constitutions contemplate them as forming the fundamental paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the Constitution is void. This theory is essentially attached to a written constitution and is consequently to be considered by this court as one of those fundamental principles of our society."

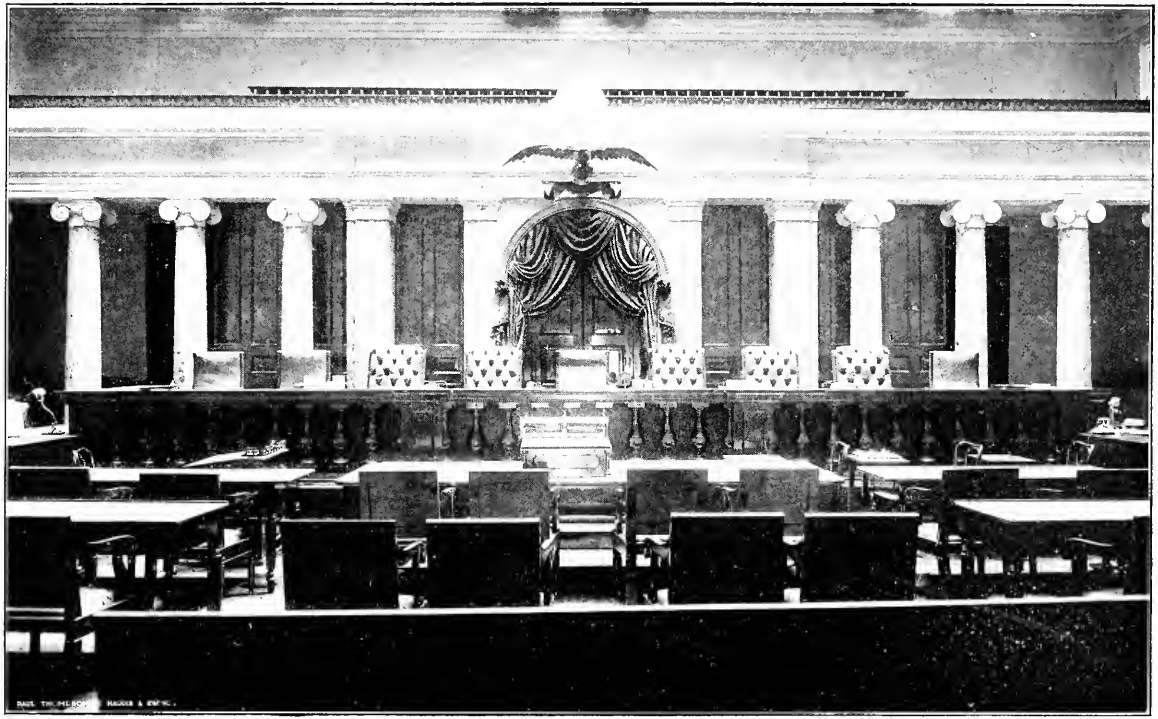
This passage is a good specimen of Chief Justice Marshall's close powers of reasoning and of forcible statement. He then argued that it was emphatically the province of the judiciary to say what the Constitution is, that is, what it permits or forbids. It is upon this point that his contention has been most stoutly opposed.

A few years later in several other cases the Supreme Court asserted its power to declare void acts of State legislatures which it deemed unconstitutional.[1] This alarmed Jefferson and the States right's party, who were afraid that the Supreme Court, if it were allowed to exercise this power of overruling State and national acts, would become such a powerful arm of the national Government that the people would lose control over their own laws. Such a power would make the courts superior to the political arm of the government, — more powerful than Congress and the President combined. Jefferson therefore urged more effective popular control of the courts, by popular election and for shorter terms, and by some easier mode of removal.

Who should be the Final Judge of what is constitutional?

All admitted that unconstitutional laws were not permissible and that they should not bind the people. But the question was, who should finally decide whether measures, proposed or passed, were really constitutional. There are usually pronounced differences of opinion on such a matter, even within

[1] See United States *vs.* Judge Peters (1819), Martin *vs.* Hunter's Lessee (1816), McCulloch *vs.* Maryland (1819), and Cohen *vs.* Virginia (1821).



CHAMBER OF THE SUPREME COURT OF THE UNITED STATES IN THE CAPITOL BUILDING, WASHINGTON, D. C.

the Supreme Court itself. Is Congress authorized under the Constitution to pass such or such a measure, or is the President authorized to approve it? They may not pass or approve acts which they think are unconstitutional, — that would be to violate their oath to support the Constitution, — but in considering the passing of laws each department of the government — Congress and the President — may act upon its own judgment of the Constitution and they are not bound by any decision of the Judiciary. But if an act is favored and is passed by both Congress and the President, the Supreme Court has the final decision as to its constitutionality, if a case involving the validity of the act comes before the court. So it has become the custom and the law in America that the Supreme Court is "the final and authoritative interpreter of the Constitution."

"Legislative Supremacy" compared with "Judicial Supremacy"

The constitutional governments of Europe do not permit such a power to rest with the judiciary. In England Parliament is supreme. This involves "legislative supremacy" and the subordination of the courts to the will of the law-making body. The American system, or practice, is usually spoken of as involving "judicial supremacy." Any act Parliament passes is constitutional, and no court would presume to set it aside. If a political leader in Parliament denounces a proposed measure as "unconstitutional," he merely means that it is contrary to precedent, to custom and usage, and that no such act has ever been passed before. He may be right; but if Parliament passes the measure it becomes constitutional. That is, it becomes a part of the constitution, since the constitution in England is made up of custom, usage, decisions, and acts of Parliament. All laws are a part of the constitution and are of equal authority, — all are passed by Parliament and all may be repealed by Parliament, and the courts instead of setting any of them aside as "unconstitutional" invariably accept them and apply them in cases that may arise.

If English judges find an act conflicting with a previous court decision they prefer the act to the decision as being of higher authority. If they find two acts of Parliament conflicting they merely look at the date of each and the later act prevails, as "the last expression of the mind of Parliament." There is no such thing as an *invalid* act of Parliament.

The American idea of "judicial supremacy" does not mean that the judicial department is superior to the legislative, but only that the fundamental law as established by the people in their constitutions is superior to both. The *theory* is that when a legislative act is declared to be unconstitutional there is no conflict between the legislative and judicial departments; the conflict is merely between two kinds of law. The judiciary must say what the law is, and see to it that no act is repugnant to the supreme law of the land, — which must prevail. But, as a matter of fact, the interpretation of the judiciary is made superior to that of the legislative or of the executive arm, and this brings about "judicial supremacy."

Statute Law must not violate Fundamental Law

There are four kinds of American law: (1) The Federal Constitution; (2) Federal statutes; (3) State constitution; (4) State statutes. The Federal Constitution is the supreme law and all other kinds of law must be in harmony therewith. If two laws conflict, not the later law (as in England) but the higher law prevails, and the lower authority must give way. The court merely states what the higher law requires and shows wherein the lower law (the statute) is inconsistent with this. The judge's decision must stand by the fundamental laws rather than by those that are not fundamental. So the theory is that it is the law, not the will of the judges, that prevails.

Four kinds of American Law

The Justices of the Supreme Court will not express an opinion upon the constitutionality of a law in advance of a case arising under it, nor upon any measure pending in Congress. The court never "goes to meet a question." It waits till the question is brought before it by a suit at law, or a test case. It will

The Law of the Constitution is decided as Cases arise

not seek to influence or interfere with a coördinate department of the government. Also the Supreme Court has endeavored throughout its history, and for the most part successfully, to keep clear of politics. There have been exceptions in a few historic cases and these have led the court to become involved in political criticism and opposition. When the Court assumed to decide on the limits of power between the State and national Governments, on the constitutionality of the Second United States Bank, on the power of the State to control the Indians within its borders, on whether Congress had power to prevent slavery in the territories [1] or issue greenbacks or impose an income tax, and on some other cases, much criticism and hostility were aroused among those opposed to the decisions. The consequence is that the Supreme Court has been denounced at times for entering politics and attempting to control the public policy of the country. The same feeling has been aroused against the courts in the States, and the recent proposals for the "recall of judges" and the "recall of judicial decisions" has come out of this feeling (see p. 44).

The Supreme Court and Politics

On the whole, the Supreme Court has won the confidence of the people, and so long as it interprets the law and explains its meaning and does not interfere in the political function of making or unmaking the law the people are satisfied to look to that court as the supreme arbiter, not in political disputes, but in deciding the scope and meaning of the law. There is a strong public sentiment which demands that a Justice of the Supreme Court should be entirely free from politics or political ambition. If he aspires to a political office, like the presidency, his decisions are likely to be rendered, or used by his supporters, for party purposes. A political party might attempt to capitalize the judicial decisions of its candidate, and that would seriously violate the spirit of the Supreme Court. It might lead to the rendering of decisions for party purposes. The integrity of the court is of the highest concern

[1] By the Dred Scott opinion.

and no ambition for elective office should be permitted to influence the judgment of that tribunal.

The Supreme Court may reverse its own Decisions

Occasionally the Supreme Court has reversed its own decisions. A new case may be brought before it, judges may change their minds, the membership of the court may change, and a later decision, quite different from a former one, may be made on the same act. In the income tax case in 1895 the court by a vote of five to four, after one judge changed his mind, reversed former decisions on this subject, and that which had been constitutional for a hundred years became unconstitutional. The court's opinion decided the matter.

A reversal of decision also happened in the greenback cases after the Civil War, after the Supreme Court had been increased in number and two new judges had been appointed.

How the Political Branches of the Government may control the Judiciary

This indicates a weak point in the armor of the court and shows how it may be controlled, if the people permit, by the political branches of the government. It is within the power of Congress and the President to "pack" it if they have a mind to do so. The number of the court may be increased by act of Congress from nine to fifteen, or to any other convenient number. If Congress and the President representing the people are united and determined to do what the court asserts to be unconstitutional (without waiting for an amendment to the Constitution) they have only to increase the membership and let the President fill the new places on the court with judges who will give the desired opinion. Since the opinion of the new appointees might be known in advance, almost any decision that it is desired to have reversed might be reversed in this way.

Danger of Political Control

This would be a radical, not to say revolutionary, process and would be approved by the people only under what they would consider extreme necessity or provocation. A President would commit a great wrong and be unfit for his high office who attempted to control, or make sure of beforehand, the opinion on any case of a judge whom he contemplates appoint-

ing to the bench. James I under the Stuart tyranny was attempting to do this when he asked Coke, the great jurist, how he would decide a particular case if it came before him. Coke replied to the King, "I would decide as becometh a judge." That is the true type of a noble and independent judge. Yet there is suspicion, and it has been charged among radical democratic parties in America, especially among the Socialists, that the Presidents in their judicial appointments are careful to safeguard property rights against popular or socialist movements in this way. If the independence of the court were to be thus submerged, its usefulness would be destroyed, or it would cease to be what it is. Americans respect their highest legal tribunal and they are unwilling to sacrifice its judicial independence. At the same time they will resist, as they always have done, any interference by the courts in determining the political or public policies of the nation or of the States.

"Court-made Law"

Although the practice of declaring acts of the legislature unconstitutional is described by lawyers as merely revealing the law, — i.e. telling what it is — and not making the law, yet the practice makes possible a good deal of "court-made law," — that is, law which is made, or prevented, by decisions or constructions contrary to the legislative desire and intention. The fact that certain laws designed to protect labor and laws designed to tax wealth have been overthrown by the courts have led to the observation that the American system of the supremacy of the courts is less democratic than the English system of the supremacy of the legislature, and that written constitutions instead of being safeguards for the common people may be safeguards to property and vested interests. It is because of the bearing of judicial decisions on the political and social demands of large bodies of people that the courts and their powers have come so largely into public controversy in recent years.

TOPICS AND QUERIES

1. Are Congress and the President subject to the Supreme Court's interpretation of the Constitution? May each department (executive, legislative, judicial) interpret the Constitution for itself?
2. Debate: Resolved, that legislative supremacy, as in England, is better than judicial supremacy, as in America.
3. A State cannot be compelled to pay its bonds held by individuals. By what law is this true? If foreign citizens held these bonds, how might the United States be involved in trouble with foreign countries?
4. The Constitution has grown more by construction than by amendment. Prove this.
5. Debate: Resolved, that the "gateway amendment" ought to be inserted in the Constitution.

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CHAPTER XVIII

MONEY AND TAXES

Money Materials

When we speak of money we naturally think of gold, silver, or paper. As a matter of fact, however, almost any commodity could be used as money and a great many have been so used. The Romans used cattle as money; the Virginia colonists used tobacco in the same way, and the American Indians used wampum. Other commodities, such as grain, tea, ivory, olive oil, furs, shells, and salt have been used as money by different peoples at different times. Any commodity which has the property of exchangeability, that is, one that is generally desired and sought after, may be used as money.

The Metals as Money

It must be plain, however, that some commodities are more desirable than others for use as money. Grain and salt were found to be too heavy and bulky to carry around and it was not easy to make small change in cattle. As a result of a sort of "survival of the fittest" the various metals, and especially the precious metals, are now universally recognized by civilized nations as the best money material. They are durable, homogeneous in quality, easily recognizable, and possess, relatively speaking, considerable stability of value. They may also be easily divided into units of any desired form or weight.

Coinage

When gold and silver were first used as money they passed from the buyer to the seller in the form of dust, nuggets, or bars, and the trader of the olden time usually carried a scale or a pair of balances attached to his saddle to be used in money transactions. This was also found to be a clumsy and time-consuming performance and in the course of time coins appeared. The bar of metal was molded into a certain

fixed form and stamped in such a way as to indicate its *weight* and *fineness*. This is now usually done by the various governments. When the United States Government stamps upon the face of a disk of gold these words, "UNITED STATES OF AMERICA ONE DOLLAR," it says in effect: "THIS IS TO CERTIFY THAT THIS COIN WEIGHS 25.8 GRAINS AND NINE-TENTHS OF IT IS PURE GOLD." The gold has been tested and weighed in the mint and the Government in making the coin certifies to its weight and fineness. But the Government also stipulates by law that this coin shall perform the function of *legal tender money;* that is, creditors are bound to take it in payment of debts.

MONEY STANDARDS

Other Functions of Money

Reference has already been made to the three functions or uses of money. The way in which money serves as a medium of exchange has been made plain. But it is also said that money serves as a "standard of value." It is evident that when a bushel of wheat is sold for $1.50, money is the standard which measures the value of the wheat. Money thus serves as a medium of exchange and as a standard of value at the same time. It really might be more accurate to call these two different phases of the same function rather than two different functions. Again, immediate payment for services or commodities is not always made. The payment is sometimes deferred for a period of time. In renting property or in agreeing to pay the interest and principal of a note we are entering into contracts to pay debts in the future. In such cases money serves as the measure or the standard of the payments thus deferred.

Price and Value: how Money varies in Value

Price is the amount of money which a commodity will bring. *Value* is the *relation*, in exchange, between different commodities, money included. Money varies in *value* as well as other things. Its value, like that of everything else, depends on its supply and demand. If there is much money in circu-

lation (inflation) money is *cheap;* that is, prices are high. You can buy more money with the same amount of produce, or less produce with the same amount of money. If money is scarce (contraction) it becomes *dear;* that is, prices are low; you have to give up more products (wheat, corn, hogs, cattle, etc.) to get the same amount of money. Value is not *intrinsic,* but is a relation, or ratio, between things that are exchanged. Gold money has a *commodity* value (as paper money has not), because if it were beaten up into bullion it could be sold as a commodity. The *price* of gold is fixed by law, because the Government agrees by law to give (or coin) a dollar for so much gold. But the *value* of gold money, as of all money, varies with the supply and demand. If gold production should double (other things remaining the same) the value of the gold dollar would fall; that is, prices would rise. The sa me number of gold dollars would pay the same amount of debts (deferred payments) but they would not buy the same amount of products. This indicates the *quantitative theory* of money, — that prices, and the amount of wealth that has to be surrendered to pay debts, depend on the *quantity* of money. It is for this reason that the money question has been one of a *conflict of interests* between debtors and creditors, and between producers and those who live on fixed incomes, from rents, salaries, and interest on money. One class favors inflation or an increase of money, while the other class opposes that policy. *Honest money* should represent the same amount of wealth (labor or products) at all times, but that is difficult, if not impossible, to attain.

Kinds of Money

There are eleven different kinds of money in circulation in the United States at the present time, namely, gold coins, standard silver dollars, subsidiary silver and minor coins (nickel and copper), gold certificates, silver certificates, treasury notes (issued under Act of July 14, 1890), United States notes (greenbacks), national bank notes, and Federal reserve notes.

While these various kinds of money circulate in daily business, side by side, they are not all on the same legal basis. Some are "legal tender" and others are not. By a legal tender is meant any kind of money which may be legally tendered or offered in the payment of debt where no contract has been made to pay the debt in any particular kind of money.

The legal tender quality of the various kinds of money may be set forth as follows:

Gold coins of all denominations are legal tender for all debts, public and private.

Standard silver dollars are legal tender without limit in payment of all debts, public and private, except where otherwise expressly stipulated in the contract.

Subsidiary silver coins are legal tender for amounts not exceeding ten dollars in any one payment.

Treasury notes of 1890 are legal tender for all debts, public and private, except where otherwise expressly stipulated in the contract.

United States notes (greenbacks) are legal tender for all debts, public and private, except duties on imports and interest on the public debt. Since the resumption of specie payment on January 1, 1879, however, United States notes have been freely received in payment of duties on imports, but the law has remained unchanged.

Gold and silver certificates are not legal tender. On the face of a silver certificate you will find this statement: "THIS CERTIFIES THAT THERE HAVE BEEN DEPOSITED IN THE TREASURY OF THE UNITED STATES OF AMERICA —— SILVER DOLLARS PAYABLE TO THE BEARER ON DEMAND." This means exactly what it says, and the silver dollars may be obtained by the bearer at any time in exchange for his certificate. The certificates are issued as a matter of convenience only. It is more convenient to carry a considerable sum of money in the form of paper than in the form of coin.

The principle of the *gold certificate* is the same as that of the

silver certificate and neither one is legal tender. Both, however, are receivable for "customs, taxes, and all public dues," and as a matter of fact are freely received every day in the actual transaction of business.

National bank notes are legal tender for all public dues, except duties on imports, and the Government may pay them out for all salaries or debts due to individuals, corporations, and associations within the United States, except for interest on the public debt and in redemption of the national currency. All national banks are required by law to accept the notes of other national banks at par.

Federal Reserve notes are not legal tender and do not differ materially from national bank notes.

The minor coins made of nickel and copper are legal tender to the amount of 25 cents.

This legal tender quality is not as important as it might appear at first thought and certainly not as important as it once was. This is due to the fact that it is the definite and expressed policy of our Government to maintain the various kinds of money on an *equality* or a *parity* of value. At the present time there is no difference in the purchasing power of the different kinds of money. The paper dollar, the silver dollar, and the gold dollar are on an equality and are exchangeable the one for the other. An Act of Congress passed in 1900 declares that the gold dollar weighing 25.8 grains, nine-tenths fine, "SHALL BE THE STANDARD UNIT OF VALUE," and also that it shall be the duty of the Secretary of the Treasury "to maintain at a parity of value with this standard all forms of money issued or coined by the United States." The significant thing to be remembered is that you can exchange a given quantity in any one kind of money for a corresponding quantity of gold. The parity and interchangeability of the various kinds of money are very important considerations in our monetary system and were brought about through congressional legislation.

Coin and Bullion Value

It should be remembered throughout that gold is the standard of value in the United States as it is in the other leading countries of the world. If a gold coin were melted down into bullion that would not affect its price. In other words the coin price and the bullion price of gold are the same. This price is fixed by law, since the Government coins all gold at a certain rate.[1] But the bullion price of a *silver* dollar, for example, at the present time is not as much as the coin price, since the Government no longer turns silver bullion into coin except to a very limited extent for subsidiary coins. We no longer have "free coinage of silver" as we have of gold. Formerly, the Government coined all the gold and silver bullion that was offered at the rate of "sixteen to one." That is, the silver in a silver dollar should weigh sixteen times as much as the gold in a gold dollar; or sixteen gold dollars could be made to every silver dollar out of the same weight of the two metals. The silver dollar is placed on a parity with the gold dollar by legislation. A person may bring any amount of gold which he happens to possess to a United States mint and have it converted into gold coins. There is no limit to this process. The same, however, is not true of the other monetary metals. The Government buys silver, nickel, and copper from time to time and coins them into money. In doing this, of course, it makes a large profit. To put a Government stamp upon fifty cents' worth of silver, for example, and make a dollar out of it would be a very profitable operation, if the Government should pay its debts out of the money so coined. It is estimated that the Government of the United States made a profit of $143,000,000 in coining silver between the years 1878 and 1907.

Importance of the Monetary System

We have been able to give in this chapter only a very meager outline of the monetary system of the United States. It would be both interesting and profitable to study the various steps in the historical development of the system and to

[1] See the topic "Price and Value," p. 338.

note the changes which have been made from time to time in order to adapt the system to changing conditions. It is important that every American citizen should understand the general principles of money and be familiar with the main features of the American monetary system. We are called upon to modify the mechanism of this system from time to time and should be able to do so intelligently.

The importance of a good monetary system to the business world is incalculable. As long as the system works well we do not hear much about it, but as soon as it gets out of order or fails to meet the demands of the business world we become suddenly aware of its importance.

Additional information on this subject may be obtained from the references mentioned in the list.

The National Banking System

The Federal Reserve Act: Preventing Money Panics

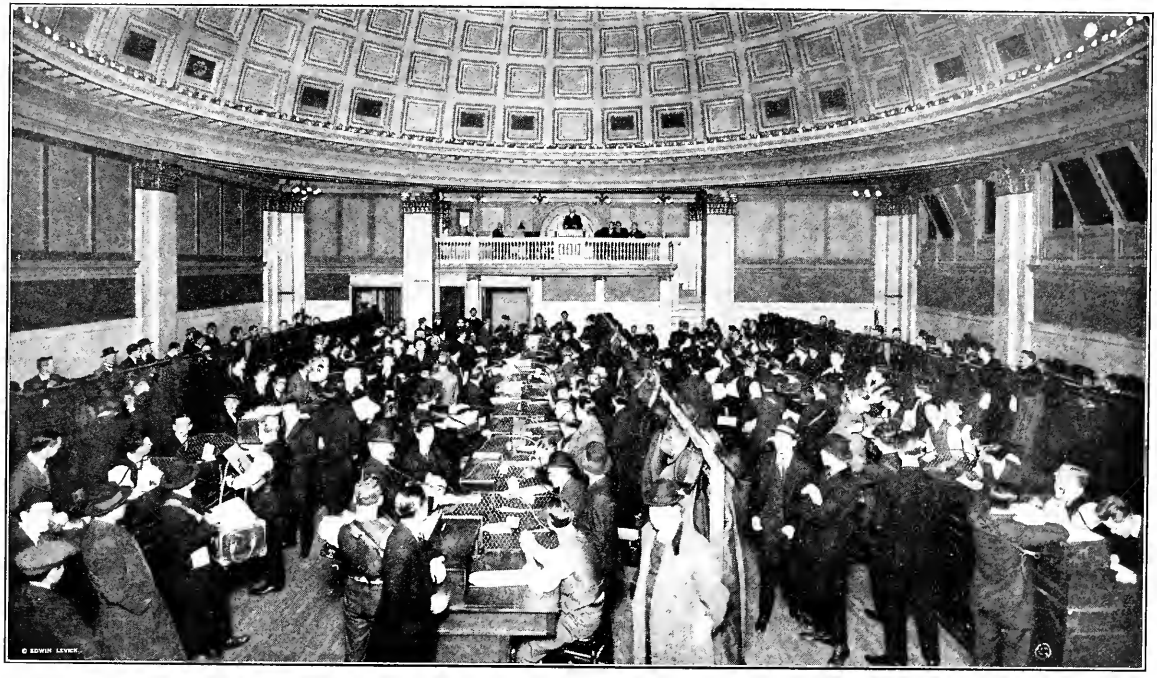
A new banking and currency measure known as the "Federal Reserve Act" became a law December 23, 1913. Under it certain cities have been chosen for the location of Federal Reserve Banks.[1] The banks within convenient distance of these cities become members (stockholders) of their respective "Regional Banks." Each of these Regional Banks is a kind of federation of banks. Branch offices may be established within the district. The Regional Reserve Banks do a banking business only with the member banks, not with individuals. But these Regional Banks may issue bank notes to be used as currency. The Federal Reserve Board (the national controlling body) may authorize the issue of these notes when it is thought best, and the notes are sent to the member banks throughout the country to be issued, or lent to their customers across the counter. These notes are obligations of the United States and are receivable by all the banks and for all taxes, customs, and other public dues, and they are

[1] These cities are Boston, New York, Richmond (Va.), Atlanta, Chicago, Dallas (Tex.), St. Louis, Kansas City, Seattle, San Francisco.

redeemable in gold on demand at the treasury of the United States or at any Federal Regional Reserve Bank. This makes them sound currency. The usual bank notes are based on Government bonds which the bank owns, and not on all the assets of the bank, such as promissory notes given to the bank by merchants, manufacturers, farmers, etc. These bank notes were increased or diminished according as the interests of the banks demanded, depending on whether the banks wished to buy or sell Government bonds. Often it was not to the interest of the banks to issue notes, as that would necessitate tying up a good deal of money in Government bonds bearing a low rate of interest.

An Elastic Currency and Panics

The consequence was the currency was rather *rigid*, neither expanding nor contracting with the demands of trade. The new system is designed to correct this evil and to give us an *elastic* currency, — a currency that will stretch out or draw in as business needs require, giving the country more currency at one time and less at others in answer to commercial demands. The Federal Reserve notes help to provide this "emergency currency." It is furnished by a Government agency, and the notes will enable the country to avoid *panics*. A money panic comes from lack of credit and loss of confidence, or when the demand for money overwhelms the supply. Then people are seized with a fear that the money they have loaned, or deposited in the bank, cannot be had when it is wanted. A "run on the bank" is started, people draw out their deposits, and hide their money away. The banks cannot make loans and have to call in the loans they have made, and the result is that people who have to meet their obligations and pay their debts in money have to suffer legal foreclosures of mortgages and property sales under the hammer, and this compels them to sacrifice their property at half its value, or less. The result is loss and ruin to thousands of honest people who could have paid their debts without loss of their property and business if time (a loan or credit) had been allowed to them. An emer-



CLEARING HOUSE, NEW YORK CITY

Clearing is a method adopted by banks for exchanging checks held by each against the others. In great banking cities where there are thousands of such checks coming in every day a *Clearing House* is established for this purpose. No money passes, but the balance for or against each bank is adjusted by accountants and an exchange of checks.

Custom House Officers Examining Baggage at a Steamship Pier

Government Inspection of Groceries at Custom House, N. Y.

All liquids, are measured to see if they are the weight specified. Canned goods are weighed and examined by the Pure Food Department.

gency currency is devised to keep the wheels of industry in motion to enable men who can give good security to get an extension of time or credit and not be compelled to close up their business or sell their property in order to pay their debts. Borrowers who have lands, houses, horses, cattle, hogs, mills, stores, factories, quarries, and other forms of wealth should be able to borrow money, and it must be shown to be unprofitable and senseless to hoard money and keep it out of use. Money makes money, but not when it is idle or hidden away.

Issuing Notes for Money is a Government Function

If there is any business in the world which Government should attend to it is to coin money and to see to it that there is a sufficient supply of money for use in business and that this money may be had on good and proper securities when and where it is needed. What blood is to the arteries money is to the channels of trade. Stop its flow and that is the end. Coining money, or issuing notes to be used as money, is a Government function, not a banking function, and it is to be regulated by public needs, not by private interests. It is claimed for the Federal Reserve System that it will supply the emergency currency, and by distributing its notes through the Regional Banks, it will have them in sufficient quantities where they are most needed. This will prevent a combination of banking interests in great financial centers from controlling the supply of currency and will increase the lending power of the local banks. It means the public control of banks and bank money as against private control. It should be remembered that banking is not entirely private business but a semi-public business. The Government charters a bank and requires it to do certain things and there are Government bank examiners who inspect the banks, to see that they obey the law and are by sound banking policies honestly safeguarding the money deposited with them.

Public Control of Banks

The Public Revenues

No Government can be carried on successfully without an adequate revenue. It must have money to pay its expenses. Most of this money is derived from taxation. "In this country more than 70 per cent of all public revenues are obtained from taxes, so the problems of taxation are the most important with which the public financier has to deal." [1]

For our present purpose we may consider taxes as "compulsory contributions collected by governments, without any specific return being given or promised." Taxes are expended, for example, for the maintenance of the police and fire departments, for the building of roads and the paving of streets, and for the support of schools. The tax-payer receives no specific return on his investment, but if his government be administered efficiently and economically he does get more in return for the tax which he pays than for any similar amount which he expends.

Justice in Taxation

If the Government is going to take from its citizens a certain amount of money each year it is important that this be done in a fair and equitable manner. What, then, constitutes justice in taxation?

We might just as well admit at the outset that absolute justice in taxation has never been attained and probably never will be. Approximate justice is all that we can hope to secure. We should, however, strive to bring our taxing systems as close to ideal justice as it is practically possible to do.

The theory of justice in regard to taxation, which is perhaps more widely accepted at the present time than any other, is that "taxes should be proportioned to the benefits derived." This is useful as a general statement, but it must be obvious that it is impossible to determine the benefits which any given individual does derive from the Government.

[1] Ely, *Outlines of Economics*, pages 695-6.

Again, it is said that taxes should be apportioned according to the ability of the individual to pay. But it must be evident that there is no way of measuring this ability. If A has twice as much property as B, is his ability to pay necessarily twice that of B? Absolute justice in taxation is, at the present time, unattainable. "A system that frankly recognizes this truth and makes for rough justice, by the imposition of taxes which are simple, stable, convenient, inexpensive, and productive, is far better than one which attempts to secure exact justice through complex and delicate schemes of taxation which cannot be definitely or efficiently administered." [1]

Increased Expenses of the Federal Government

Apart from the *billions* appropriated for special purposes of war, the growth of expenditures by the Federal Government has been enormous in recent years.[2] Not counting war expenses the National expenditures are nearly twenty times what they were at the opening of the Civil War, and more than a hundred times greater than under Washington's administration.[3] This increase has come about by the natural growth of Government work and its greater services to the people.[4]

The greater part of the National disbursements go for postal services and for the Departments of War, Navy, and Interior. Relatively small parts go for commerce, labor, agriculture, and education.

Congress has the taxing power, — the power "to lay and collect taxes, duties, imposts, and excises," but all "such taxes, duties, and imposts shall be uniform throughout the

[1] Ely, *Outlines of Economics*, pages 697–8.

[2] In 1917 Congress appropriated nearly *twenty billion* dollars ($20,000,000,000) for war purposes. This amount is beyond our understanding. But it is evident that in order to avoid waste and extravagance, the amount called for should be under the plan and control of one over-seeing committee, not under many committees working at cross purposes or without knowledge of one another's proceedings.

[3] State and City expenditures have increased correspondingly.

[4] See pp. 78–83.

The Taxing Power and Sources of Revenue of the National Government

United States." [1] This taxing power extends to all persons and property within the United States. The purposes for which these taxes may be levied are "to pay the debts, provide for the common defense and general welfare" of the United States.

There are certain limitations on this taxing power of Congress:

(1) No tax or duty may be levied on exports from any State.

(2) Congress may not tax any instrument or agency by which a State Government performs its functions or carries on its business.[2] "The power to tax involves the power to destroy." [3] The National Government has imposed a tax of ten per cent on all notes issued for circulation as money by State Banks. This destroys, or prohibits, the issuing of such notes. Issuing bank notes, or authorizing their issue, is not regarded as a necessary function of a State Government. Congress has the power under the Constitution "to coin money and to regulate the value thereof" and to secure "a uniform currency," and it does not wish the country to have many kinds of State bank currency. So it prohibits their issue by the taxing power.

(3) Direct taxes must be apportioned among the several States according to their population. In 1895 the Supreme Court declared the income tax to be a direct tax, and the act of 1894 imposing such a tax was declared null and void because, since incomes up to $4000 were exempted, the tax was not distributed

[1] Constitution, Art. I, Sec. 8.

[2] Likewise, the State Government may not tax any instrument or agency by which the National Government performs its functions.

[3] Chief Justice Marshall in the case of McCulloch *vs.* Maryland in 1819.

according to population. More people in New York or Massachusetts, in proportion to population, would have the larger incomes than in Arkansas or Oklahoma.

Sources Revenue

The three principal sources of revenue to the General Government are (1) customs duties, (2) internal revenue and (3) postal receipts. The expenses of the postal service are usually more than the receipts and the postal revenues may be regarded more as a payment for a direct service than as a tax. Apart from this service fully nine tenths of the National revenues come from customs duties and internal taxes.

Customs duties are duties on imports, or taxes collected on articles brought into the United States from foreign countries. Only the National Government has a right to impose this form of tax; no State may do so. Import duties are an indirect tax; they are inexpensive and easy to collect. The importer, or merchant, usually shifts the tax burden to the consumer, who pays in the form of a higher price for the imported articles. These taxes do not fall upon people in proportion to their wealth but in proportion to the amount they buy or consume of the imported goods. If the Government collects fifty or sixty millions of dollars of import duty on sugar, it is evident that a family with a 10,000-dollar income would not pay ten times as much of the tax as a family with a 1000-dollar income.

The customs duty, or tariff, is sometimes levied on the bulk or number of the imported commodities. It is then called a specific duty. If levied on the value of the articles it is called an *ad valorem* duty. Sometimes these two kinds of duties are combined. We have used the customs duties as a source of national revenue ever since the foundation of the Government in 1789. There has been a controversy almost from the beginning over the extent and purpose of

these tariff duties, whether they should be levied "for revenue only" or with a view to protecting home manufactures. It is the controversy between the protectionist and the free trader.

Internal taxes have usually been excise taxes, that is, taxes levied upon consumption, manufacture, or sale of goods within the country. The consumer usually pays this tax also, since he must pay a higher price for the articles which he buys. This form of tax in ordinary times is usually laid only on liquors and tobacco and other commodities whose use it is desired to discourage. But in war times, when the Government must have greatly increased revenues as in the Civil War and in the Great War of 1917, the internal revenue taxes are extended to numberless commodities and commercial operations, — insurance policies, promissory notes, bank checks, railway tickets, express and freight rates, theater tickets, and stamp taxes of various kinds.

The Government gets the money it needs for carrying on war in two ways: By increased taxation and by borrowing, i.e. issuing its bonds which the people buy. No war can be paid for as it goes on merely by increased taxes, but taxes and bonds should be fairly proportioned so that the people while being made to feel the burden of the war may extend the time of payment over a period of years and not be overburdened by taxes that would tend to check productive enterprise and business. "Viewed as a whole, the internal revenue system is the most satisfactory part of our entire financial structure, State or Federal. Its returns are fairly steady and reliable in times of depression. Its growth is automatic. It is imposed on articles the demand for which is tolerably inelastic. Its burden is not perceptibly felt. It is honestly and economically collected; and, finally, it is abundantly capable of yielding additional revenue should an unforeseen emergency arise." [1]

When a Government wishes to borrow money it offers its

[1] Daniels, *Public Finance*, p. 148.

bonds and its certificates of indebtedness. The bonds run for a longer time, for 20 or 30 years, the certificates for a shorter time, for from two to five years, till such time as the Government thinks it may be able to borrow at a lower rate of interest. During the Civil War the United States had to borrow, and because the fate of the Government and the outcome of the war were uncertain the Government had to pay 6 or 7 per cent interest on its bonds (which were also free from taxation). The credit of the Government was not so good as it was after the success of the war.

Bond Issues and Certificates of Indebtedness

After the United States entered the European War issues of "Liberty Bonds" were offered to the citizens of the country, the first three at $3\frac{1}{2}$, 4, and $4\frac{1}{2}$ per cent interest. That is, the people were asked to lend money to their Government for the purpose of carrying on the war — for raising, equipping, clothing and feeding an army and supplying the navy, etc.

Liberty Bonds and Thrift Stamps

In 1918 the Government issued *War Savings Stamps* and *Thrift Stamps*, to encourage thrift and saving among the people and to enable men, women, and children of small means to lend money to the Government, with the assurance that it will be kept safely and paid back with interest. The *Thrift Stamps* afford one of the simplest forms of saving ever offered to a people. By this plan the obligation of the Government is sold in the form of stamps which are to be attached to a certificate. The *War Savings Stamps* are five-dollar stamps.

The Income Tax

The income tax at the present time is another important source of national revenue. In a national sense this is a comparatively new tax. Foreign countries, notably Great Britain, have taxed incomes for many years, and certain American states used this form of taxation one hundred years ago. In 1895, however, the United States Supreme Court declared a national income tax law to be unconstitutional, and the income tax was made possible as a source of national revenue by the adoption of the Sixteenth Amendment to the Constitution

in 1913. This law provided for a tax at a low rate on all incomes in excess of $4000, with a progressively higher rate for larger incomes. In 1916 this tax produced more than $100,000,000. In 1917 the war income tax was increased and the exemptions were lowered. Unmarried men or women having an income of $1000 or more and married persons with an income of $2000 or more were made subject to the tax and there was assessed a graduated increase in the rate of tax as the incomes increased. In a general way it may be said that the income tax is a very just one. It represents fairly well the ability to pay and it is also easier to determine a man's income than to ascertain the value of his property. On the whole, the income tax is more equitable than the general property tax.

Other Sources of Revenue

In addition to these major sources of revenue the national Government secured in 1917 $179,000,000 from a tax on corporations, and $6,000,000 from the sale of public lands and from certain other miscellaneous sources. The earnings of the post office were $329,000,000 in 1917, but the expense was somewhat less than that sum. The total Federal receipts in 1915 were $1,007,000,000. The receipts and the expenditures of the national Government have increased very rapidly in recent years.

State and Local Taxes

In addition to Federal or national taxes we must also have taxes to pay the expenses of our State and local governments. The general property tax is the source of most of the revenue of the States and local units. This tax is levied upon practically all property, real and personal, in the possession of the people. There are certain exemptions which are unimportant and may be disregarded. At one time this general property tax was a fairly equitable one, but it is not so under present conditions. Assessors, as a rule, are not trained for their work, large amounts of personal property owned by well-to-do men escape taxation, and the whole system is a constant temptation to dishonesty. The revision of the general prop-

erty tax is one of the many important present problems of State finance.

Some of the States also levy a tax on incomes and many of them levy taxes on inheritances. The poll tax is still levied to some extent but is gradually going out of use, and rightly so.

The United States is a very rich country and has experienced little difficulty in raising sufficient money to carry on the various forms of national, State, and local government. Hence, the whole matter has been handled in a rather slipshod and unscientific manner. To reduce the whole matter of public finance to an equitable and scientific basis will be one of the great problems of the future. This whole subject stands in need of a careful review and thorough revision. The introduction of the budget system in both State and nation would be a long step in the direction of business-like public finance (see p. 286).

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TOPICS AND QUERIES

1. Why are gold and silver regarded as the best substances for use as money? Is not paper better than either? If not, why is it so generally used? Why not use paper altogether and release gold and silver for use in the arts and industries?
2. What is a coin? Is all coin money? Is all money coin? When Congress issued "greenbacks," was that coining money? If not, how could it have been constitutional?
3. Explain "legal tender." What injustice would be done in the enforcement of contracts by making money cheaper or dearer?
4. Show the error of using the term "intrinsic value." What meaning is intended by such a term?

5. What is an "honest dollar"? Is money the creature of law or independent of law?
6. Why should a rich man without children be taxed in order to help educate other people's children?
7. Ought a part of the income from public utilities be taken as taxes or public revenues? Why?
8. How may licenses and franchises be used as sources of public revenue?
9. What is an "elastic currency"? An "emergency currency"? Why should these qualities in a national currency be provided for by government?

CHAPTER XIX

THE NATION IN ITS FOREIGN RELATIONS

THE nation has to deal both with *domestic* affairs and *foreign* affairs. Its domestic concerns, or home activities, have greatly increased in recent years, as we have seen, although it is true that most of our domestic affairs and local laws are still attended to by the States (see pp. 142–143). But the States, in the beginning of the Union, gave up the management of foreign affairs entirely to the general Government. No State may make a treaty, or enter into an alliance, or receive a foreign ambassador, or make war, or deal in any way with a foreign government. International dealing is the exclusive function of the national Government. In its conduct of foreign affairs the United States seeks to act in harmony with international custom which is called international law.

Character of International Law

International law is a collection of rules based upon custom, agreement, or common consent, which are accepted as mutually binding by modern civilized states in their dealings and relations with one another. *Real law* has force behind it. It comes from statutes or from decisions of judges based on customs, or precedents and the common sense of the community (common law) and its observance is obligatory upon the community for which it is made. There is an *enforcing power* for the protection of the community to see that the law is *obeyed*. International law has no such sanction behind it, no such law-enforcing power. Strong nations often disregard it and violate their own agreements to it, and weak nations often appeal to it in vain. The first essential of law — that it is binding and must be obeyed — is absent. Hence, some

have said that there is no such thing as international law. It is only *custom*, or what nations agree to,—and then often disregard.

Although these rules are only a set of usages and customs, yet nations, as a rule, recognize them as law, and, in a spirit of good will and fair dealing, usually act upon them and observe them. That is, the nations will enforce this law each for itself, but not against one another. In Great Britain and in the United States international law is regarded as a part of the law of the land, and its established principles, so far as each of these two nations accepts them, are enforced in the courts. The Constitution gives Congress power "to punish offenses against the law of nations," such as piracy, or crimes on the high seas; laws are enacted for this purpose, and the United States Supreme Court will recognize the principles of international law in its decisions.

International law deals with such topics as peace and war, rights and duties of belligerents and of neutrals, blockades, sieges, privateering, captures made at sea, the law of the sea, mediation, intervention, naturalization, extradition, protection of citizens and aliens, and all kinds of treaties, arbitrations, and international conventions and conferences.

Scope and Basis of International Law

International law acts on states (nations) not on individual citizens. Each state controls its own citizens, enforcing only such parts of this law as it chooses. If a state disregards or violates international law or refuses to be bound by it, the only way it can be punished is for other states, or countries, to make war upon the offending state or to cease to have any relations with it. If not punished by war, it ought to be denounced and disgraced as an outlaw among nations.[1]

[1] In this book the word *State* is used in two senses. When spelled with a capital it refers to one of the States of the American Union; otherwise, it refers to any political sovereignty or *nation*, as that term is used in America. In Europe the term *nation* signifies a *race* of people, those speaking a common language. For instance, the German *nation* includes all Germans whether they live in Germany, Austria, Brazil,

This international law which binds states rests on several forces: (1) the public opinion of mankind, (2) the custom and usage of countries, (3) the treaties by which states have consented to be bound, (4) the executive conduct of governments in their foreign relations, — such as their correspondence, agreements, and recognition of certain duties and rights,[1] (5) acts of legislatures in recognition of international law, (6) judicial decisions in prize courts and other maritime cases, (7) writers and authorities on international law, who attempt to define or interpret this law. Such are the *sources* of international law, which give sanction and force to it and restrain nations from disregarding it.

America's Foreign Policy

Washington's Foreign Policy: No Entangling Alliances

America sought her independence by entering into a European alliance. The Continental Congress made two treaties with France in 1778 by which, in return for France's aid in gaining our independence, we agreed, among other things, to aid France in defending her American possessions in the West Indies. This treaty was a great help to America, but after our independence was obtained it proved embarrassing and it turned out to be the last as well as the first treaty of alliance into which America ever entered. When Washington was President and war broke out between Great Britain and France in 1793, France called on us to "make good" on our part of the alliance. But Washington wished the rising young nation of America to pursue a policy of neutrality toward the warring European nations. He did not wish the United States to get mixed up in European affairs. He interpreted the French treaty as consistent with that policy and he did

or in the United States. In this passage the word *state* is used to signify a politically independent sovereignty, which Americans usually call a *nation*.

[1] The executive is usually the branch of the government which conducts foreign relations.

not believe it committed America to take part on the side of France in the European war. Washington announced that "the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers."[1]

Later in his Farewell Address Washington urged upon his country as a fixed and permanent policy "to observe good faith and justice toward all nations; to cultivate peace and harmony with all, to avoid "inveterate antipathies against particular nations and passionate attachment for others," and "to steer clear of permanent alliances with any portion of the foreign world." "Against the insidious wiles of foreign influence a free people ought to be constantly awake. . . . The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little *political* connection as possible." Washington saw that Europe had a set of interests remote from American interests, and that European nations were likely to be involved frequently in controversies and wars the causes of which were foreign to our affairs. He, therefore, wished America to pursue her own course; to remain *one people*, to grow strong, and to be well prepared to defend herself under an efficient government. Then "we may choose peace or war, as our interest guided by justice shall counsel." [2]

Adams and Jefferson follow Washington's Example

Jefferson, as Secretary of State under Washington, accepted this policy and helped to carry it out. John Adams, following Washington as President, pursued the same policy, maintaining peace with France and making sacrifices in order to free his country from the obligations of the French treaties of 1778, and when Jefferson became President he adopted the Washington policy, announcing in his inaugural address for America's guidance the famous maxim, "Friendly relations with all nations, entangling alliances with none." Ever since the time

[1] Proclamation of Neutrality, April 23, 1793.
[2] Washington's Farewell Address.

of Washington and Jefferson this has been the foreign policy of America toward European affairs.

The Monroe Doctrine

Washington's policy of American freedom from European interests, alliances, and wars was confirmed by the Monroe Doctrine. This famous doctrine was announced by President Monroe in his message to Congress, December 2, 1823. This doctrine consists of two distinct parts which may be summed up in two words: 1. Non-colonization. 2. Non-intervention.

These two ideas are separated in the message; they are separated in the circumstances from which they arose, they are separated in the things to which they apply, and they are separated in the principles of international law on which they depend.

Non-colonization

The first part of the doctrine was the outcome of a dispute between Russia, Great Britain, and the United States over the Northwest territory on the Pacific (the Oregon country). A nation's title to newly discovered territory depends in international law upon three facts — discovery, exploration, and settlement. There were claims and counterclaims among these nations. John Quincy Adams, our Secretary of State under Monroe, wished to forestall any further European claims to territory on the American continents. He therefore induced Monroe to insert this part of the doctrine in his message: "*The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered subjects for future colonization by European powers.*" This was the announcement not so much of a *doctrine* as of a *fact* in political geography. The age of discovery and colonization, Adams asserted, was past so far as the American continents are concerned. All the territory was now in possession of some sovereign power. Great Britain denied this to be in harmony with the *fact*, as she was still seeking to colonize the Northwest and by exploring and

planting trading posts to establish her claims to that region. But whether the colonizing age in America had passed away in 1823 it has certainly passed away now.

Non-intervention

The second part of the Monroe doctrine was the outcome of a system of alliance and interference by certain powers of Europe in an effort to control the destinies and forms of government in other countries. The Holy Alliance was a combination of European sovereigns formed in 1815, partly for the purpose of helping one another to maintain their power; to prevent anything like popular revolt or revolution among the people, and to prevent the overthrow of absolute monarchy and the substitution therefor of republican or constitutional governments. The Alliance interfered several times among the weaker nations of Europe to suppress popular liberty and to prevent their peoples from overthrowing their monarchs and setting up free governments of their own. In 1822 the powers of the Holy Alliance were about to cross the Atlantic ocean and apply their system of interference in America. They were threatening to interfere with the republics of South America which had been for a number of years seeking to establish their independence from Spain. The military power of these combined European governments — Prussia, Austria, Russia, France, — was to be brought to the aid of Spain to be used in America to reduce to subjection Spain's revolted colonies, and to restore the absolute monarchical authority of Spain. American sympathy was with the South American republics in their struggle for independence, and the people of the United States believed that the people in the Central and South American countries should be allowed to determine their own destiny and their own form of government in their own way.

The Holy Alliance, 1815

When the designs of the Holy Alliance became known to Great Britain, Canning, the English minister for foreign affairs, wrote to Richard Rush, the American minister in England, urging the United States to take decided ground

against intervention in South America by the Allied Powers. England wished the South American republics to become independent for commercial reasons. Rush wrote to Monroe, and Monroe submitted the correspondence to Jefferson, asking his advice. Jefferson, in a famous letter, replied:

"This raises the most momentous question since independence. Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to allow Europe to intermeddle with cis-Atlantic affairs. America should have a system separate and apart from that of Europe. Now that England offers to come to our side in this opportunity we should improve the opportunity to protest against atrocious violations of the rights of nations by interference."

Jefferson's Advice to Monroe

The substance of Jefferson's advice Monroe inserted in his message as the second part of the Monroe Doctrine:

The political system of the Allied Powers is essentially different from that of America. Any attempt on their part to extend their system of interference to any portion of this hemisphere is dangerous to our peace and safety. . . . We could not view any interposition for the purpose of oppressing them [the Spanish American States] or controlling in any manner their destiny by any European power in any other light than as a manifestation of an unfriendly disposition toward the United States.[1]

This does not say that the Unites States would go to war to prevent European interference in America, that is, to defend the Monroe doctrine; but it does say that its violation would be considered as an unfriendly act. What should be done about it would have to be determined by the circumstances. The warning which it contained, in conjunction with the friendly British policy, effectually prevented any European interference in South America at that time.

[1] Message of Monroe, December 2, 1823.

Applications of the Monroe Doctrine

The Case of Yucatan, 1848

This doctrine, or policy, arose from the circumstances of the time, and it was probably intended to have only a temporary application. But public men and writers have applied the doctrine in a permanent and broader way. In April, 1848, following the close of the Mexican War, President Polk asked Congress for authority to take possession of Yucatan. The Mosquito Indians in that country were waging a war of extermination against the whites. The Yucatan whites appealed to the United States for aid, offering to transfer to the United States the territory and dominion of the country in return for help in suppressing the insurrection of the Indians. The whites of Yucatan had also applied for aid to England and Spain, and President Polk was afraid that if we did not accept the offer, Yucatan might pass under the control of one of these powers. Polk, in addressing Congress, referred to the Monroe doctrine as "opposed to the transfer of American territory to any European power." He urged Congress to take steps to prevent Yucatan from becoming a European colony, which "in no event could be permitted by the United States." President Polk held that the Monroe doctrine opposed the further acquisition of any European dependency in America, and upon this ground we should resist the English possession of Yucatan.

It was on this occasion that Mr. Calhoun, then the only surviving member of Monroe's Cabinet, said that Polk was urging an entire misconception of Monroe's original declaration. Calhoun said that when the occasion and circumstances which called forth the declaration had passed away, the doctrine, or declaration (made only for the occasion), had also passed away. Calhoun claimed that the United States had not announced a general and permanent policy, or rule, of opposing European acquisition or intervention in America, and that Monroe's "noncolonization" applied only to new land un-

claimed and unpossessed and consisted merely in denying that there was any such land in America; and that every case of attempted intervention should be decided on its own merits and be resisted or assented to accordingly. Justice and the interests of the United States were to determine in each case. Calhoun opposed our interference in Yucatan in 1848 because he thought circumstances did not justify it. Other senators thought the Monroe policy committed us against any further acquisition of territory on this continent by European powers. Thus, we see, a difference as to the scope of the Monroe doctrine had already arisen.

The Case of Mexico, 1861-1865

In 1861 England, France, and Spain united to secure redress and security for their citizens in Mexico. Some of these citizens held Mexican bonds which Mexico was unwilling, or unable, to pay. Complaint was also made that life and property were not safe in Mexico. In order to prevent the threatened European interference the United States offered aid or credit to help Mexico pay her debts. Mexico consented to this arrangement, but when Secretary Seward gave information of this to the allied powers, this proposal for a peaceful settlement was rejected. One excuse for European intervention in Mexico was now taken away, but these allied powers still proposed, in effect, to make war on Mexico in order to set up a new government there, on the pretext that foreign residents were not safe in that country.

The United States did not deny the right, in international law, of one nation to make war on another for reasons deemed good and sufficient by the belligerent nations. But the reasons and motives behind this European war of intervention in Mexico were not above suspicion. This was seen in the letter of the French Emperor ordering his military commander to march upon the capital of Mexico: "*To redress grievances, to establish bounds to the extension of the United States further south, to prevent her from becoming the sole dispenser of the products of the new world.*" So it was seen to be a movement

for power and commercial influence with a view to restricting the power, influence, and importance of the United States. The movement was a scheme of Napoleon III of France, who wished to lay in Mexico the foundations of French supremacy, "to prevent the preponderance of the United States in the trade of the western hemisphere and to turn the tide of race predominance in the Americas in favor of the Latins." [1]

In April, 1862, at another conference of the three European powers, England and Spain objected because France had gone beyond the terms of the first agreement in giving military aid in Mexico to the party favoring an imperial government, and these two powers withdrew from further coöperation. France, whose money claims against Mexico were smaller and more questionable than the other powers, was now left to herself in Mexico. She proceeded by military aid to the imperialist party to establish that party in possession of the Mexican capital. The republican constitutional president [2] was driven out, and, without even a pretense of getting the consent of the Mexican people, the French proceeded to set up an imperial form of government and to offer the throne to the Archduke Maximilian of Austria. The misguided Maximilian accepted the crown and the French Emperor acknowledged his government and entered into a treaty with it to give it support and security by military aid.

Here was a plain palpable violation of the Monroe doctrine. Here was a clear undisputed European interposition for the purpose of "controlling the destiny" of an American state. The interests of the United States were certainly involved. If the Monroe doctrine were not to be asserted and defended in such a flagrant intervention in the affairs of an American state, it is not to be doubted that it could never again have been consistently referred to as a principle or precedent in our foreign relations. It is important to note how the precedent

[1] Bancroft's *Life of Seward*, II, 423.
[2] Juarez.

of Monroe and Adams was followed by Lincoln, Seward, and Grant

Lincoln, Seward and Grant uphold the Monroe Doctrine

This French intervention in Mexico occurred at a time when the United States had its hands tied by the mighty struggle of the Civil War. It may have been purposely timed with that embarrassment in view. But before the close of the war Congress denounced the French intervention. President Lincoln's Secretary of State, William H. Seward, in his diplomatic correspondence with Napoleon's government, plainly restated the Monroe doctrine and America's position,—that we regarded France as a belligerent in Mexico, with the right to occupy Mexican soil for war purposes, but that France had no right "to destroy the domestic republican government of Mexico and to establish there an imperial system under the sovereignty of a European prince." The presence of such a government, so long as it should endure, could not but be regarded by the people of the United States as injurious and menacing to their interests and republican institutions. Every state on the American continent had a right to secure for itself a republican government, and any attempt by foreign powers to control these states or to prevent their enjoyment of such institutions as they wished to establish was wrongful and antagonistic to the United States.

This was a fair expression of the Monroe doctrine. General Grant enforced it. He looked upon the French intervention in Mexico "as a direct act of war against the United States and supposed as a matter of course that the United States would treat it as such were their hands free to strike." He had reason to think that Lincoln felt the same way. Accordingly, "after the surrender of Lee," says Grant, "I sent Sheridan with a corps to the Rio Grande to have them where they might aid Juarez [1] in expelling the French from Mexico. These troops got off before they could be stopped, and Sheridan distributed them up and down the river to the consternation

[1] The Mexican Republican leader.

of the French." [1] The French government asked their withdrawal, but Seward insisted upon the withdrawal of the French, and the result was that the French troops were withdrawn and Maximilian's government toppled to its fall. The Mexican Republicans regained power and Maximilian was captured and shot.

The Case of Venezuela, 1895-96

In 1895 a long-standing boundary dispute between Venezuela and British Guiana came to a head. Venezuela claimed that for many years Great Britain had been gradually extending the boundaries of British Guiana at the expense of Venezuela. Diplomatic relations between Great Britain and Venezuela had been broken off and the question arose as to whether Great Britain was seeking to acquire, or colonize, territory in America contrary to the Monroe doctrine. The United States had sought to get this boundary dispute settled by arbitration, but Great Britain refused and questioned the right of the United States to interfere. She contended that the dispute was of concern merely to Great Britain and Venezuela. But President Cleveland and his Secretary of State, Mr. Richard Olney, insisted that the United States was concerned and had a right to interpose, in harmony with the traditional American policy of the Monroe doctrine. Secretary Olney acknowledged that the Monroe doctrine did not make the United States the protector of other American states, nor relieve any of them from obligations as fixed by international law, nor prevent any European power from enforcing such obligations or from inflicting merited punishment for the breach of them; but "its single purpose and object" was that "no European power or combination of powers should forcibly deprive an American state of the right and power of self-government and of shaping for itself its own political fortunes and destinies." This was held to mean that none of its territory should be forcibly taken from an American state by a European power.

[1] *Memoirs of Grant*, Vol. II, pp. 545–546.

Was this a part of the Monroe Doctrine? President Cleveland thought so. In December, 1895, the President sent a message to Congress in which he affirmed that "the traditional and established policy of this Government is firmly opposed to a forcible increase by any European power of its territorial possession on this continent"; and inasmuch as Great Britain had refused impartial arbitration, a commission of the United States should investigate the matter and come to its own decision. "When such report is made and accepted it will, in my opinion," said President Cleveland, "be the duty of the United States to resist by every means in its power, as a wilful aggression on its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belong to Venezuela."

This meant that the United States was ready to go to war, if need be, to defend this interpretation of the Monroe doctrine. Neither Great Britain nor America desired war, and the outcome of the matter was that England and Venezuela consented to leave their boundary dispute to an international tribunal. War was thus avoided and the Monroe doctrine was vindicated or enlarged.

The Enlarged Monroe Doctrine

Thus we see that from the time of its original announcement in 1823 the Monroe doctrine has been enlarged and extended in the public mind of the United States until it has come to mean, in a general way, "America for the Americans," that we must prevent all European interference with American affairs (in politics and government) and prevent the transfer of any American territory to any European power;[1] that no European

[1] Thus, while Spain owned Cuba and Denmark owned certain islands in the West Indies we would have objected, and did so object, to the transfer of these islands to any other European power. Spain and Denmark were weak or declining powers. It was the threatening increase in America of the strong powers with which we are chiefly concerned.

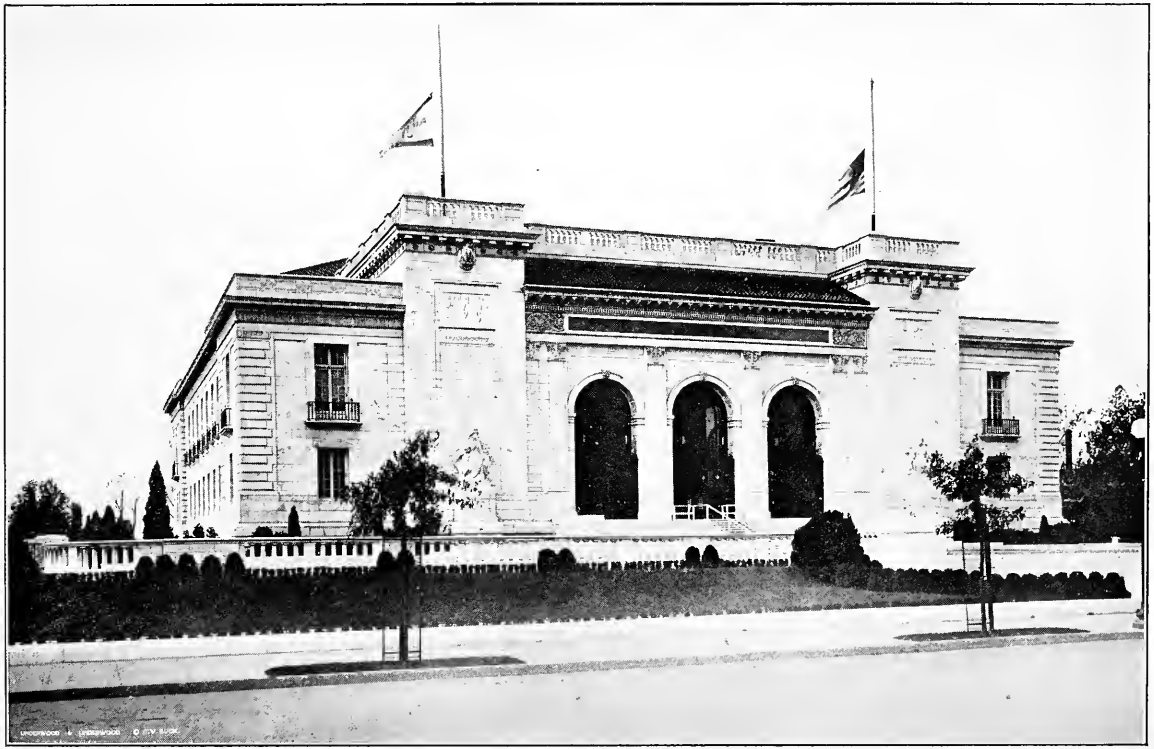
state shall be allowed to extend its system of government to this continent; and that the Monroe doctrine commits the United States to the obligation of defending the independence of our sister republics on this side of the Atlantic and of protecting the territory of Central and South America against settlement, appropriation, or invasion by any European power. This is different from the original Monroe doctrine, but it has become under that name the accepted policy of the United States, and it is for this reason that a powerful navy and adequate "preparedness" are necessary under present world conditions as the best means of preserving peace for the western world by preventing European intervention and aggression toward the weaker American powers.

European Nations and the Monroe Doctrine

Will the European nations, with strong military power to back them, seek to establish colonies in the Western hemisphere, or to obtain territory by purchase or conquest for this purpose, in order to extend their trade, their power, their empire, and their imperial control to any part of America? If so, the Monroe policy would call upon the United States to resist such designs. Our first duty is to protect our own territory and the lives and property of our citizens. Is it not also our duty to stand by the guarantees of the enlarged Monroe doctrine by protecting the territory of South America and the Western hemisphere from settlement or invasion on the part of European powers? Should we not assist our sister republics on this side of the Atlantic to defend their independence rather than leave them open to attack or appropriation by stronger powers?

It is clearly our duty to prevent any European nation from extending its ambition for power and empire to the American continents, "peaceably if we can, forcibly if we must." This may be done without war, indeed it may be a means of preventing war.

In the interest of world peace President Wilson proposed even a larger application of the Monroe doctrine, that it should



PAN-AMERICAN BUILDING, WASHINGTON, D. C.

Sixty-fifth Congress of the United States of America

At the First Session,

Begun and held at the City of Washington on Monday, the second day of April, one thousand nine hundred and seventeen.

JOINT RESOLUTION

Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

Champ Clark

Speaker of the House of Representatives.

Thos. R. Marshall

Vice President of the United States and President of the Senate.

Approved 6 April, 1917

Woodrow Wilson

be, not an American doctrine, but a world doctrine: "That the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world; that no nation should seek to extend its policy over any other nation or people, but that every people should be left free to determine its own policy, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and the powerful." This would make for peace with all nations, which is America's chief desire.

The Monroe Doctrine a "World Doctrine"

To promote this noble end America found it necessary to depart from her traditional policy of isolation and of avoiding all "entangling alliances." Great Britain and France have already assented to the application of the Monroe doctrine on certain occasions. We might enter into treaty arrangements with these great powers by which they would consent to recognize and support the Monroe policy as a permanent rule of conduct. The proposal has already been made to induce the "A B C Powers" (Argentina, Brazil, Chili) to recognize its validity and to coöperate with us in its defense, and we may find it desirable to enter into a Pan-American alliance for this cause. The permanent purpose of the Monroe doctrine is to keep the peace on this side of the Atlantic against aggression and attack by European powers, in order that every nation in the two Americas may be left free to control its own territory and work out its own destiny and progress in its own way. America must be prepared for that defense as long as danger threatens from any war-making nation of Europe.

The Great War revealed the nation in Europe against whose hostility and spirit of conquest America needs to be on her guard. The imperial and military rulers of Prussia, with their purpose of obtaining "a place in the sun," have looked, not only to Asia and Africa, but to South America for commercial and colonial enlargement. The Monroe doctrine has been an obstacle in their path. German hostility to that

doctrine is well known. On the other hand, Great Britain is an American power, with more territory in the Western World than has the United States itself. Great Britain helped to originate the Monroe doctrine in 1823; she has since generously recognized it in restraint of her own aggrandizement, while her navy, together with that of America, has been the main defense against European encroachment.

The Unity of English-speaki Peoples a Guarantee of Peace

Britain and America are territorial neighbors. With an unfortified frontier boundary line of 3000 miles between them, the English-speaking peoples of America and Canada have lived side by side in an unbroken peace for more than one hundred years. In the Great War they fought together to save themselves and the world against an autocratic, war-making military power which would override the Monroe doctrine to extend its dominion in America as soon as its interests prompted and its power permitted.

The world struggle has made it clear that the English-speaking peoples throughout the world should stand together, if not in an alliance, at least in an *entente cordiale* and a good understanding. They are democratic self-governing nations, inheriting common traditions and habits, with a common language, with common political ideas and institutions based on the same historic foundations of civil liberty. They have common interests to defend against conquest and encroachment. Their mutual coöperation and support of one another in international affairs will not only help America to maintain the Monroe doctrine but it will promote throughout the world the underlying purpose of that doctrine, — the self-direction of all nations and the establishment of a firm foundation for a just and lasting peace throughout the world. America does not wish to be *Germanized* nor to have cultivated among her people the Prussian idea of world conquest and war. To prevent this, and to bring it about that the world may be ruled by reason and self control instead of brute force, that the world may be made a safe

place in which individuals and democratic nations may develop their own lives without fear of becoming the prey of foreign aggression, America was forced to depart from her isolation and enter the great World War.

War, Belligerency, and Neutral Rights

War is the use of force among nations, a contest of armed public forces, conducted according to recognized rules of war. Whether it is right or wrong depends upon the purpose for which it is made and the method in which it is waged. It may be waged to enforce a right or redress a wrong, if reason and a sense of justice fail to accomplish these ends. It is the last resort of nations, and each nation must answer to its own conscience and to the judgment of the world for its motives and its conduct.

A *belligerent* is one of the warring powers. If an insurrection or rebellion occurs within a state the insurgents may be recognized as a *belligerent* if they show, as a matter of fact, that they are able to carry on a public civil war in a legal sense; that is, if they can show that they are politically organized under a responsible government and can protect the lives and property of citizens and residents in the territory over which the insurgent government has control. In 1861–1865 the *independence* of the Southern Confederacy was not recognized by any foreign power; the South did not succeed in establishing that; but the Confederacy was recognized as a *belligerent*. The North felt that England was a little hasty in doing this, but Mr. Lincoln, acting for the government of the Union, practically recognized the belligerent status of the South when he declared the Southern ports in a state of blockade (April 19, 1861). This recognition admitted the South to international standing only so far as conducting war was concerned.

Belligerent Rights

Belligerency carries with it the right to visit and search neutral vessels at sea; to destroy enemy vessels without

being guilty of piracy; to capture contraband goods; to institute a blockade; to commission privateers and armed cruisers, to take and exchange prisoners, and to do all things which a civilized power may do *in carrying on war*. But if belligerency arises from an insurrection or rebellion it does not involve making treaties with foreign powers or exchanging diplomatic agents. That would be to recognize the independence of the insurgent belligerent and to receive it permanently into the family of nations, which should not be done until the contest between the insurgents and the parent state *is held to be decided*.

Conflict of Interest between Belligerents and Neutrals

When two nations are at war the belligerents have certain rights which neutral states are bound to respect. The neutral states, also, have certain rights which are to be respected by the belligerent powers in their conduct of the war. A *neutral state* is one that abstains from the war, rendering no aid or service to either belligerent. It seeks to be impartial and to take no part in the contest, but to maintain the usual peaceful relations with both belligerents. This is not always easy to do, because the interests of belligerents and neutrals are likely to come into conflict. The neutral wishes to be free from the losses and burdens of the war and to have the trade of its people with other nations go on without interruption. But it is the right of either belligerent to stop, if he can, the transport to his enemy of all goods or articles which will reinforce that enemy and enable him to prolong the struggle. For this reason naval power, or sea power, is very important, and the nations that command the seas have a tremendous advantage over their enemies. They can secure munitions, foodstuffs, and all kinds of supplies from neutral nations and from their own dominions across the seas.

In the World War English sea warfare consisted, chiefly, not in great battles, but in guarding convoys and supply ships, and in hunting down a few German cruisers in the beginning of the war and in "bottling up" the German

fleet. When a war breaks out, a merchant vessel of one of the belligerents may deem it unsafe to continue its peaceful commercial voyages, if the enemy has greater sea power. It may, therefore, take refuge in a neutral port, and not venture out to sea where the vessel and cargo might be captured or destroyed by an enemy cruiser hovering about on the look-out for such prey. A number of large German vessels of the Hamburg-American and North German Lloyd lines were hospitably protected in American ports, until America was forced into the war; then they were taken over (sequestered) by the United States for naval and transport uses, as a belligerent has a right to do with enemy property, settlement to be made at the close of the war.

If a *war* vessel enters a neutral port to avoid the enemy or to escape from stress of weather, the neutral is bound to give notice that the warship must leave in twenty-four hours. If it does not leave within the time limit, to escape or to face the enemy, then the vessel and crew are "interned," that is, kept in the neutral country during the continuance of the war. The crew may be confined within certain limits by the neutral or paroled on a pledge of honor that they will not escape to serve their country again while the war lasts. If soldiers on land are forced by retreat into neutral territory they are also interned for the war. A neutral must not allow its territory to be used by a belligerent, not even as a refuge, nor as a base for transmitting wireless messages from coast stations to belligerent warships, nor allow a belligerent airplane even to fly over it.

Right of Visit and Search

In the process of stopping all goods and reinforcements going to the enemy which may help the enemy continue the war, a belligerent may not only capture or destroy all enemy vessels, but the belligerent may also stop at sea any neutral vessel, may visit it (board it) and search it and take it into port, and take from it all contraband goods on board which the belligerent finds are destined for the enemy. This gives the bellig-

Contraband Goods

erent a good deal of control over the commerce of the neutral in time of war. The belligerent may absolutely prohibit, if he can, all trade with its enemy in *contraband* goods and all trade of any kind with places and ports that are *besieged* or blockaded. *Contraband* goods are those which are useful for military purposes. It is impossible to make a list of contraband articles. What is contraband may depend upon circumstances, or the destination of the goods, or a treaty agreement between nations. The chief point is whether the articles are intended for, or are likely to be used for, military purposes. They will be released or condemned according to that. It is considered legitimate in war to starve, or exhaust, a place or nation into subjection. Vicksburg in 1863 was forced to surrender in this way, and when the Union blockade of Southern ports was completed in 1865 the Southern Confederacy was almost starved out, even before Lee surrendered at Appomattox.

Private Trade in Contraband Goods

A neutral *nation* does not attempt to transport contraband goods to a belligerent — that would be an act or a cause of war — but the individual citizens of that nation may do so in the course of trade for their own gain. A neutral nation may allow its people to engage in contraband trade, but they do so at their own risk, as all such trade may be treated as illegal by a belligerent and the contraband goods be confiscated. That is, if a private merchant ship flying a neutral flag is carrying contraband goods to a belligerent port, or if it attempts to break through a blockade, it is engaging in a trade which the other belligerent has a right under international law to prevent if it can. If it has the power to do so, the belligerent may seize such neutral ship and penalize it. The penalty may be the confiscation of the goods and sometimes of the ship, and these penalties are imposed by the prize courts of the belligerent country. That is, international law gives to the belligerent as a means of defeating its enemy the right to stop and search all neutral merchant vessels on the

high seas or when approaching blockaded ports, for the purpose of determining the nationality of the ship and the nature of the goods.

Contraband trade and the violation of blockade must be prevented by the belligerent, not by the neutral. The citizens of a neutral nation have a right to engage in uninterrupted trade so long as the belligerents have not the will nor the power to prevent it. Shipment of munitions and war supplies from America to the Allies in the World War, while America was a neutral, was freely engaged in, only because the Central Powers (Germany and Austria) had not the sea power to prevent it. The proposal to have the United States Government put an embargo on munitions and war supplies and prohibit their export was made in the interest of Germany and Austria. That would have been an unneutral act, hostile to the Allies, as it would have changed the rules and conditions for the conduct of the war after the war had begun. Any belligerent that would attempt to carry the goods home could get them. That Great Britain and France were able to get the goods because of sea power, while Germany was not, was one of the fortunes of war. If America had helped Germany and Austria by preventing the Allies from shipping war supplies from our ports, then that nation would have the advantage in the war which had done most to prepare for war. If it were known that such a policy would be pursued by neutral nations, in case war should arise, then all nations in times of peace would feel compelled to turn their energies to military purposes, to establishing munition plants, to storing up war supplies, to raising and drilling armies, and to directing their industries and government in preparation for war, since each nation in war would have to depend on its own resources.

The Question of Embargo on Munitions

America as a Peace Power has always contended for the protection of neutral rights and the enlargement of neutral

America's Struggle for Neutral Rights

interests. During the Civil War, while the United States was a belligerent, our interests were on the other side of the question and we insisted on holding neutrals to a strict accountability; but usually, as in European wars, American interests have lain with the neutrals. During the Napoleonic wars (1793–1815), when nearly all the powers of Europe were belligerents, for or against Napoleon, America sought to maintain her neutrality. Both Great Britain and France committed aggression and violence against American commerce. The depredations of France brought on a state of quasi-war with that country in 1798, and later the wrongs inflicted by England upon the sea, in stopping and seizing American vessels and cargoes, interrupting American commerce, and impressing American seamen, brought on the War of 1812. America declared for "Free trade and sailors' rights." This did not mean opposition to a protective tariff, but it meant the "freedom of the seas," — that the high seas should not be under the jurisdiction or control of any nation but should be open to the uninterrupted trade of all nations, and that the belligerents should be required to interfere with neutral trade as little as possible.

Our interests have generally led us to favor the restriction of belligerent power and the enlargement of neutral rights. America has, therefore, been ready to contend for all rules favorable to neutrals proposed from time to time, — that contraband goods should be reduced to the minimum and that foodstuffs (which the United States is always in a position to furnish belligerents) should not be included; that a neutral ship should be allowed to carry enemy goods, if they were not contraband; in harmony with the maxim, "Free ships make free goods," that neutral goods (not contraband) should be free from capture and confiscation even if they were in an enemy's ship; and that a blockade to be binding must be effective, — that is, it must be maintained by a force sufficient really to prevent access to the coast of the enemy.

Principles of the Declaration of Paris, 1856

A blockade is the forcible closing of a belligerent's ports or

harbors. It suspends neutral commerce with such ports. In exercising this right a belligerent may designate a whole coast line as blockaded, or the mouth of a river, an entrance to a gulf or bay, and he may prevent access to blockaded places by ships of war, or by batteries if these can be planted on land. A blockade *must be announced* to neutral powers, i.e. notice must be given; it must be *applied impartially* to the ships of all nations; and it can be applied only to an enemy's ports and coasts. A *paper blockade* is a mere declaration of blockade, and a neutral vessel is not to be condemned for *intention* to disregard it, if searched at sea and evidence is found from the ship's papers that it is destined to or from a port merely *declared* under blockade. The neutral vessel before it may be condemned must be "caught in the act" of actually running the blockade, or attempting to do so. There must be an effective blockading force.

These principles, in the interest of neutrals, which America has long stood for, have now become international law. They were set forth by the Five Great European Powers in the famous Declaration of Paris in 1856. This Declaration added another principle, "Privateering is abolished." The United States did not accept this at the time (though we now act upon it) because, not having a large navy, we wished to rely upon privateers, in case of war, as destroyers of an enemy's commerce. We proposed a more liberal policy in the interest of peaceful neutral nations. America proposed to abolish privateering provided the Great Powers of Europe would agree to refrain from the capture, confiscation, and destruction *of all private property at sea*. The Powers refused to sanction this liberal enlargement of neutral interests. It would have reduced sea warfare to blockades and sieges and combats between public armed vessels of the belligerents. American influence will be helpful in bringing about in time this enlightened policy in the interest of peace-keeping nations.

Privateering

The Submarine in Warfare: As a Commerce Destroyer

Soon after the European War of 1914 began, the commerce of Germany was swept from the seas and the few war cruisers which she had on the open ocean were run down and destroyed. She attempted to retaliate by trying to destroy the commerce of her enemies in order to prevent their getting food and war supplies from over-sea, by the use of the submarine, a new vessel in naval warfare. As a means of enabling her to strike at English commerce, Germany issued a decree declaring that a "zone of war" existed within the waters adjacent to the British Isles and that all vessels flying the flag of Great Britain, or of any of her allies, were liable to destruction in those waters and that travelers sailing in the war zone on ships of Great Britain or her allies did so at their own risk. The United States protested against this decree, warning Germany that if, in pursuance of it, American citizens lost their lives, Germany would be held to "strict accountability." We have pointed out that a neutral vessel must submit to visit and search to enable the belligerent to see if contraband goods are on board. The merchantman belonging to a belligerent power may be captured as a prize and taken into port; or if this is not possible the merchant vessel may be sunk. But before sinking a merchant vessel of the enemy, it is the bounden duty of the belligerent to provide for the safety of the passengers and crew. If the enemy merchantman has guns on board and makes forcible resistance when hailed by an enemy war vessel, or if the merchantman attempts to escape by flight when ordered to stop for the purpose of visit, then the belligerent war vessel may sink the merchantman, and if the lives of the innocent passengers are forfeited the commander of the merchantman would be responsible.

The *Lusitania*

The passengers and crew of merchantmen are innocent noncombatants who have no part nor lot in the war and are not subject to its penalties. They have not forfeited their lives by traveling on a peaceful passenger vessel belonging

to citizens of one of the belligerents, and no commander of the other belligerent has a right to condemn them to death. It was failure to give warning and allow time for passengers and crew to escape that made the sinking of the *Lusitania* such a heinous wrong. Men, women, and children were drowned in the sea, without any chance for their lives, and among them over one hundred American citizens. It was a barbarous atrocity.

The United States solemnly protested against this disregard of "those rules of fairness, reason, justice, and humanity which all modern opinion regards as imperative." It is practically impossible for the officers of a submarine to visit a merchantman at sea and examine her papers and cargo. It is practically impossible for them to make a prize of her; and if they cannot put a prize crew on board of her, they cannot sink her without leaving her crew and all on board of her at the mercy of the sea in her small boats. Therefore it is clear that submarines cannot be used against merchantmen without "the inevitable violation of the sacred principles of justice and humanity."[1]

America and World-Peace

America and the Rights of Nations

One of the problems in international law now confronting America relates to the duty which devolves upon her in reference to the rights of nations. The United States has united in an Institute of International Law representing twenty-one republics in North and South America. This Institute or Conference has announced certain rights which its members claim belong to all nations. These rights relate especially to the violation of neutral territory and the rights of neutral nations against the aggressions of warring nations.

1. Every nation has a right to exist. As one human being has no right to take the life of another, so no nation may take or threaten the life of another nation. The life of a small

[1] President Wilson's note to Germany, May 13, 1915.

nation is just as sacred and as precious as the life of a large nation.

2. Every nation has the right to independence, as every man to the pursuit of happiness. It should be allowed to control itself and grow and develop in its own way.

3. Every nation is, in law, the equal of every other nation. The perfect equality and entire independence of all nations is a fundamental principle of public law. In a society of nations all are on the same footing and each may "assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle it," says the Declaration of Independence. The relative power of a nation, whether it be strong or weak, makes no difference.

4. Every nation has a right to the territories within its defined boundaries. These should be held to be inviolable.

5. All nations have an equal right to the uninterrupted use of the seas. On the high seas all states meet on a footing of absolute equality and independence. There no state has a right to exercise any authority upon the subject or citizen of any other state. This refers of course to conditions of peace.

These rights which each nation has are entitled to be protected by all other nations. Right and duty are correlative. The right of one imposes a duty on all to observe the right.

After the World War is over the greatest problem of the nations will be how to prevent war. There is a rising demand in America that the influence of this nation among the other nations of the world should be so used as to lead to the substitution of reason for force in the conduct of nations. We must insist upon the substitution of permanent peace for hideous war. What are the means proposed by which the United States may lend her aid in bringing this about? How are differences between nations to be settled by reason instead of by force and destructive war?

1. *More democratic control of foreign affairs.* It has been observed that wars are brought on by monarchs, rulers, and diplomats for ambitious, dynastic, and financial reasons. The people who have to bear the burdens and pay the taxes of war and give their lives in its battles are not consulted. This is largely true. Three or four men on the war staff or in the foreign office beyond the control of the people may decide the awful issues of peace or war, of life and death and poverty, for millions of people. This is true not only in monarchical countries but in democratic countries. Foreign policies, like domestic policies, should be made more responsible to the people, so that if there is to be war the people may choose it with their eyes open, or that the people may have the power to determine, if war is to come, that it shall be fought only in a just, righteous, and vital cause.

Foreign Affairs and Popular Rule

2. *Arbitration treaties.* America has made a number of such treaties with other nations. A number of these were renewed in 1914. In general such treaties agree that when differences arise between the United States and another power they should be submitted for discussion and decision to an impartial tribunal. Such an arbitration tends to remove ill feeling and to promote good will, and while all wars may not be prevented in this way, every successful arbitration, like that of our treaty with Great Britain (1871) resulting in the Geneva Arbitration, tends to reduce the probability of war. Great Britain and the United States also arbitrated the Venezuela boundary dispute in 1899, and in this spirit of forbearance, good will, and arbitration these two nations have kept the peace for over one hundred years. It should be our purpose so to act and live with all the nations of the world.

Arbitration by Treaties

3. *The Hague tribunal, a permanent court of arbitration.* There have been two conferences of the nations at The Hague (1899, 1907) in an effort to promote international arbitration and to induce the nations to recognize a permanent tribunal for the settlement of disputes, and to proceed in their conduct

The Hague Tribunal

toward one another on principles and rules agreed to by a peaceful conference of nations. The Hague Conference has proposed several ways by which nations may be aided in avoiding war. One is that friendly nations may be encouraged to offer their mediation (their "good offices") to two nations that have not been able to settle their differences by diplomacy. Another is that when peace is endangered a commission of inquiry may be appointed to aid in the solution of the disputes. But especially the Hague Conference has undertaken to maintain a *permanent court* of arbitration, accessible at all times, competent to try all arbitration cases unless the parties agree to a special tribunal. This permanent court is to sit at The Hague. Each contracting power willing to enter upon this plan may select not more than four persons versed in international law, "of the highest moral reputation," and these representatives of the various nations constitute a list as a court of arbitrators. From this list the two nations whose differences are to be arbitrated may select the tribunal. Each party to the dispute selects two arbitrators from the list of the full court, but only one so selected may be from among the persons named by it as members of the permanent court. After the four arbitrators are chosen, these four choose an umpire. If three of the four cannot agree upon an umpire, a third power chooses one.

An International Court for Judging Disputes between Nations

To such a court, high minded, fair, impartial, created to preserve peace and avoid war, it is proposed that nations should submit their differences, on all subjects that are *justiciable;* that is, such as can be settled on principles of law, justice, and equity. This involves an international judiciary, or the judicial settlement of international disputes. It means that just as individuals have united in the community and the state to avoid strife and private war and community feuds and to preserve the order and peace of society, so nations are going to unite and submit their differences to an international court of reason and equity.

League for the Enforcement of Peace

The individual in society can be controlled. If he is quarrelsome and lawless, if he insists on fighting and shooting and killing some of his neighbors, the state can imprison him or put him where he can do no harm. The police and the sheriffs and the militia exist to keep the peace against such dangerous characters. But there is no *international* police, no international power to *enforce* the judgment of the Hague Court after a quarrel has been arbitrated. If there is a quarrelsome warlike nation bent on enlarging its boundaries and its power, which insists upon going on the warpath to shoot and kill and destroy, how can such a nation be restrained? It will have to be restrained like an outlaw among men, — *by force*, by a combination of nations for this purpose. A *force* must be created so much greater than the force of any nation or any alliance hitherto formed that no nation or combination of nations can face or withstand it.

A New Era in American Foreign Relations

It seems that the United States is entering upon a new era in connection with foreign nations. Washington and Monroe insisted upon a policy of isolation. This was a wise policy for the time, but the times have changed. America is now a world power and must assume its responsibility as such. Isolation is no longer possible. It took the Pilgrim Fathers sixty days to reach America from Europe. It takes five days now, and communication is instantaneous. The Atlantic Ocean is no longer a barrier but a highway between nations, and for certain purposes a subway. Responsibilities are forced upon us which we cannot avoid.

One of our public men has well expressed the spirit in which we should act and the policy by which we should be controlled in this new era in American history: "We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire,

American Policy toward Other Nations

and we deem the observance of that respect the chief guarantee of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers, that we do not freely concede to every American republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth that we may all become greater and stronger together." [1]

TOPICS AND QUERIES

1. Debate: (1) "Resolved, that America should abandon the policy of isolation from European affairs."
   (2) "Resolved, that the Monroe Doctrine should be abandoned by the United States."
   (3) "Resolved, that President Cleveland was not justified in asserting the Monroe Doctrine in the Venezuela case."
   (4) "Resolved, that the United States should join the league for the Enforcement of Peace."
2. How can the rights and independence of small nations be made secure against aggression and conquest from the strong nations?
3. What proposals are now outstanding to enable the nations to act together for permanent peace?
4. Would it be wise, or possible, to refer to the people the question of whether the nation should enter upon a war?
5. How can international law be enforced?
6. How has the Monroe Doctrine changed and grown since it was announced? Did Monroe declare a fact, a principle, or a policy?

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CHAPTER XX

AMERICAN IDEALS IN GOVERNMENT

A NATION lives by its faith, by what it believes. It must have visions which it hopes to realize and ideals toward which it strives. All achievement in government begins with an idea. The thought of good government goes before the work of good government. Men must believe before they will act; they must be devoted to their ideals before they will live for them or labor for them. Before the building rises the plan must be made; so before a people can erect a state to govern justly they must know what justice is and desire it; they must keep it before them as an ideal. "We must have our eyes steadfastly fixed upon the idea of good if we wish to conduct ourselves wisely in private or public life." [1]

Importance of Ideals

PRINCIPLES OF THE DECLARATION OF INDEPENDENCE

When James Russell Lowell was asked how long he thought the American republic would live he replied, "As long as its people are true to the ideals of its founders." The founders of the American republic announced certain principles as its foundation stones. Some of these are in the memorable words of the Declaration of Independence, words which ought to find a place in the heart and memory of every American citizen:

I. Principles of the Declaration of Independence

"We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are

[1] Plato, *The Republic.*

instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness."

This teaches:

1. That men have rights, — life, liberty, pursuit of happiness. This suggests the ideal of individual liberty, that an individual has certain fundamental and inalienable rights which even the state cannot override. [1]

2. That governments exist for the benefit of the governed, to secure and protect these rights of men. Government is *for* the people.

3. That these governments "derive their just powers from the consent of the governed." Government should be *of* the people and *by* their consent.

4. Whenever any government usurps power and becomes destructive of the rights of men, then it is the right of the people to overthrow that government; but when the people have overthrown a perverted government, it is their right and duty to establish a new government on whatever principles and in whatever form will insure the public safety and happiness. This teaches the right of revolution and the duty of establishing law and order.

5. Under law and government, and in the protection of the rights of the people, "all men are created equal."

This means "equal rights for all and special privileges for none." This is a fundamental maxim of American democracy,

[1] The student will think of conflicts that arise between the rights of the individual and the need and welfare of the nation. The public welfare is the highest law, to which individual rights have to give way. This is especially true in times of war and of great public danger when service and sacrifice are expected of all. Then citizens willingly part with their liberties for a time in order to preserve them forever.

an *ideal* which America has announced as worthy of attainment. It is that all men, rich or poor, high or low, ignorant or learned, white or black, red or yellow, without regard to lineage, religion, color, race or previous condition of servitude, — that all must be treated without discrimination by law and government and be allowed the fullest and freest exercise and development of their natural powers. There should be no legal barrier to prevent any man from acquiring the property and rights or rising to the position to which another member of the community is entitled to attain. Accordingly, rank and privilege, political position, and the right to rule "cannot be hereditary, but must be open to every person who, by talent, diligence, and good fortune is capable of attaining to them." [1] All qualities and all inequalities should have fair play. Let every individual in our democratic society have a chance to be and do his best.

Much of American history has been inconsistent with this ideal. Slavery was an utter denial of it. In its political and economic life America has not yet attained to it. But the ideal still lives as a fundamental article of American faith and the people will continue the struggle to realize it in practice.

In this Declaration of their ideal our fathers "meant to set up a standard maxim for free society, which should be familiar to all and revered by all; constantly looked up to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere. . . . Its authors meant it to be, as, thank God, it is now proving itself, a stumbling block to all those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should reappear in this fair land and commence their vocation, they should find left for them at least one hard nut to crack." [2]

[1] Lowell, *Essays on Government.*

[2] Lincoln's speech on the Dred Scott case, June 26, 1857.

Application of Principles in the Constitution

After independence had been attained the Founders of the Republic sought by a Constitution to secure this liberty and equality under law. In doing this they set forth other ideals.

II. Civil Liberty and Justice

The Founders decreed that there shall be freedom of speech, freedom of the press, freedom of peaceable assembly, freedom of petition. The homes of the people shall be secure against search, seizure, or intrusion, except by legal process. No person shall "be twice put in jeopardy of life or limb for the same offense," nor shall any person "be deprived of life, liberty, or property without due process of law." The right of trial by jury shall be preserved; no excessive bail shall be required, nor excessive fines imposed, nor cruel punishments inflicted. No bill of attainder or *ex post facto* law shall be passed. The "privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it," but any one accused of crime shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime may have been committed. He shall not be arrested except by legal process; he shall be informed of the exact nature of the accusation; he shall be confronted by the witnesses against him, and shall not be compelled to testify against himself.

These are the "muniments of civil liberty" which have come down to us from the struggles of English history. They were included in the English "Bill of Rights," and they were written in our early State constitutions and in the Constitution of the United States.[1] All the States recognize and assert these principles of civil liberty. We have here the very ideals for which the Constitution was established, — to "establish justice, insure domestic tranquillity (law and order), provide for the common defense, promote the general welfare, and

[1] See Amendments and Art. I, Sec. 9.

secure the blessings of liberty to ourselves and our posterity." Such are the ideals for which many of our fathers fought and died.

These rights were *old*, not new, in 1776. They were not originated in the American Revolution or in the Constitution of 1787. The "embattled farmers" who stood at Concord and Lexington and the suffering heroes of Valley Forge believed in them to the extent of being ready to fight for them, but so did their British ancestors. The American Revolution was in the nature of a *civil war* among British subjects. The spirit that resisted the "tyranny of George III," that resisted taxation without representation in America and stood for local self-government in domestic concerns, was the same spirit that opposed the tyranny of the Stuart Kings, and objected to their forced loans, benevolences, and ship money. It was the same spirit that fought for and established in the other English civil war (1642–1648) and in the English Revolution of 1688, the fundamental essential maxims and ideals of our liberties, — the rights of self-government and self-taxation, of habeas corpus, trial by jury, and the right of citizens to hold their rulers, even their kings, responsible for their conduct.

> All we have of freedom, all we use or know,
> This our fathers bought for us, long and long ago;
> Ancient right unnoticed as the breath we draw
> Leave to live by no man's leave underneath the law.[1]

Englishmen like Hampden, and Pym, and Cromwell in 1642 stood on the same ground as did Samuel Adams and Patrick Henry, and Thomas Jefferson and George Washington in 1776.[2]

[1] Rudyard Kipling, *The King*.

[2] This is now generally recognized throughout the English-speaking world. The spirit of democracy is dominant in Britain. There is a monument to Lincoln in Edinburgh, Washington is praised as a great Englishman, and patriotic celebrations of the 4th of July are sometimes observed in England.

These ideals of liberty and representative government have come down to us from the English-speaking race. Other peoples, too, have believed in and adopted these ideals and principles of government, and through hardships they have sought new homes in America where they might live under them and enjoy them. But these liberties were first planted here by liberty-loving pioneers from Old England, from the land whose language we speak, whose customs we have followed, whose law and institutions we have continued, whose ideas and spirit of liberty we have inherited.

III. Freedom of Religion

Among the ideals of American liberty Freedom of Religion deserves to be emphasized. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This principle was written in our Constitution at the very beginning.[1] It had been written into the State constitutions and into the famous Ordinance of 1787:

"No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory."

This religious freedom has led to certain principles and practices that have become fixed in the constitution and public opinion of America:

1. No union between church and state.

2. No religious organization shall exercise control over the political action of individuals or groups. A citizen may take his religion but not his politics from his church.

3. No privileges and no disabilities to the citizen on account of his religion.

4. Equal toleration, equal protection, and fostering care, for all religions by the State.

This freedom of religion, — a free church in a free State — our Pilgrim Fathers had sought in the beginning. Seeking

[1] See the 1st Amendment, 1789.

it for themselves they helped to find it for future generations of their countrymen.

What sought they thus afar?
Bright jewels of the mine?
The wealth of seas, the spoils of war?
They sought a faith's pure shrine.

Ay, call it holy ground,
The soil where first they trod!
They have left unstained what there they found —
Freedom to worship God![1]

IV. Obedience to Law and the Rule of the Majority

Another worthy ideal is obedience to law and a ready submission to the will of the majority. This is "the vital principle of republics." [2] This spirit will save us from turbulence, violence, anarchy, and unnecessary revolutions. It promotes love of order and reverence for law. It may be true that no question is settled till it is settled right. The majority may vote to settle it wrong a great many times, but those who agitate for changes and reforms are led to see that in a free democratic republic rights are to be won and great changes made not by bloodshed and revolution, but by means of public discussion and the processes of public law. Government by law is paramount. This spirit will also lead majorities in power not to be opressive and violent but moderate and considerate toward minorities.

This emphasizes the importance of a free press, free speech, free assembly, free discussion, that the people may be informed, so that false judgments may be avoided, errors corrected, and wrongs righted. Under such freedom the people will "wobble right," as Lincoln said, for while "you may fool all the people some of the time and some of the people all the time you cannot fool all the people all the time."

While Abraham Lincoln was yet a young man he held up this ideal of obedience to the law before his fellow-citizens:

[1] Mrs. Hemans, "The Pilgrim Fathers."
[2] Jefferson, First Inaugural Address.

"Let every American, every lover of liberty, every well-wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of '76 died to support the Declaration of Independence, so to the support of the Constitution and the laws let every American pledge his life, his property, and his sacred honor; — let every man remember that to violate the law is to trample in the blood of his father and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babes that prattle on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpits, proclaimed in legislative halls, and enforced in courts of justice. And in short, let it become the political religion of the nation, and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars." [1] This imposes on the State the duty of avoiding unjust and unrighteous laws.[2]

V. Universal Education

An educated people is one of America's dearest ideals. "If a people expects to be ignorant and free in a state of civilization it expects what never was, and never can be," says Jefferson. Jefferson was the founder of the University of Virginia and he sought for the American democracy which he did so much to establish an education as universal as the liberty which he held to be the heritage of all men. He wished education and discussion to be free and information to be widely diffused. He thought a good newspaper was better than a standing army as a defense to the republic.

[1] Abraham Lincoln, Address, 1837, before the Young Men's Lyceum of Springfield, Illinois.

[2] The student will reflect on the right of men to resist unrighteous laws. "We should obey God rather than man." "Resistance to tyrants is obedience to God." Should our fathers have obeyed the Stamp Act or the Fugitive Slave Law?

This universal education is for the purpose of making more efficient citizens for a free state. All American communities gladly tax themselves for education. This is an ideal of the common people, as all parents desire an education for their children better than they had for themselves and they wish a social state in which the good and the competent may the better make their way up and the ignorant and foolish will inevitably drop down.[1] Popular government must carry with it popular education.

VI. Ideals of Jeffersonian Democracy

Jefferson in his Inaugural Address held up other ideals for American democracy:

(1) Peace and honest friendship with all nations, entangling alliances with none.

"A concert of powers for the sake of world-peace would not be an 'entangling alliance.' All would unite to act in the common interest and all be free to live their own lives under a common protection." [2]

(2) Local self-government in all domestic concerns.

(3) Free and fair elections by the people.

This is the safest way to correct abuses. Government abuses will be "lopped off by the sword of revolution if peaceable means are unprovided."

(4) The supremacy of the civil over the military authority. That is, the people must control the army and not the army the people. No large standing army but a well-disciplined militia, — our best reliance in peace and for the first moments of war. It is now believed that this militia should be *nationalized* and be brought under the control of the national government and not be left to forty-eight different State systems.

(5) Honest payment of our debts and the sacred preservation of the public faith.

"These principles form the bright constellation which has gone before us and guided our steps through an age of revo-

[1] President Eliot, *New York Times*, July 27, 1916.
[2] President Wilson, Jan. 22, 1917.

lution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment; they should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety." [1]

VII. Union and Nationality

After independence and confederation, the Constitution was made "to form a more perfect union." Liberty and union were developed in America through trial and tribulation. They were ideals long before they were facts. A united nation was reached only "by the discipline of our virtues in the severe school of adversity." The nation hung over the precipice of disunion in civil war. But that great war decided that the ideal should be realized, "liberty and union," under *one* nation, *one* government, *one* flag.

VIII. The Ideal of World Peace

Lincoln desired that his Nation might bear its part among nations in promoting democracy, liberty, justice, and righteous peace throughout the world, — the final ideal of the Citizen and the Republic. We should recall his noble ideal when he spoke for the peace of righteousness in his last inaugural address:

"With malice, toward none; with charity for all; with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow and his orphan, and to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." [2]

America's Purpose in the World War

"It may be permitted to us to be glad that we have an opportunity to show the principles which we profess to be living — principles which live in our hearts — and to have a

[1] Jefferson's First Inaugural Address.
[2] Lincoln's Second Inaugural Address.

chance by the pouring out of our blood and treasure to vindicate the things which we have professed. For the real fruition of life is to do the things we have said we wished to do. There are times when words seem empty and only action seems great. Such a time has come, and in the providence of God America will once more have an opportunity to show to the world that she was born to serve mankind." [1]

Such are the ideals of the Citizen and the Republic!

TOPICS AND QUERIES

1. How do ideals influence a nation's life?
2. In what sense are all men "created equal"?
3. Does the Government of the home or the school "derive its just powers from the consent of the governed"?
4. What is involved in civil liberty?
5. In what kind of religious freedom did the early colonists in America believe?
6. Name some influences in American history that have promoted union and nationality.
7. Repeat from memory Lincoln's Gettysburg address.
8. Recite seven distinct ideals shown in the life and government of the American people.

REFERENCES

Abbott, Lyman. *The Rights of Man*, Chap. III.
Adams, E. D. *Ideals in American History.*
Fiske, John. *American Political Ideas.*
Merriam, C. E. *American Political Theories.*
Roosevelt, Theodore. *American Ideals.*
Tufts, James H., *Our Democracy.*
Woodburn, J. A. *The American Republic and its Government*, Chap. I.

[1] President Wilson, Memorial Day Address, May 30, 1917.

HOW TO OBTAIN INFORMATION

In studying "Present Day Problems in Democracy" and other topics suggested in this volume the student should seek the aid of his public library. He should be able to find there the standard current periodicals, — *The Outlook*, *The Independent*, *The Literary Digest*, *The Review of Reviews*, *Collier's*, *North American Review*, *The Yale Review*, *Atlantic Monthly*, *The Survey*, *Current Literature*, and others. These will inform him on current topics. The library should also have ar *Index to Periodical Literature* which will direct the student to the magazines in which articles may be found on given topics. The student should be shown how to use this Index. The "American Year Book" and the "Business Digest" will give brief compact information on all kinds of current civic events and problems. Many of the larger libraries have small "Traveling Libraries" which they are willing to send out to responsible high schools, or clubs, upon request. The Extension Departments of the Universities are also ready, in many States, to send books and references on various topics to inquirers. The following organizations are ready to furnish information along the lines in which they are especially interested:

American Association for Labor Legislation, 131 East 23d St., New York City.
The American City, 93 Nassau St., New York City.
American Civic Association, 913 Union Trust Building, Washington, D. C.
American Federation of Labor, 801–809 G St., N. W., Washington, D. C.
American Highway Association, Colorado Building, Washington, D. C.
American Home Economics Association, Station N., Baltimore, Md.
American National Red Cross, 1624 H St., Washington, D. C.
American Peace Society, 31 Beacon St., Boston, Mass.

American Prison Association, Secretary Commissioner of Charities and Corrections, Trenton, N. J.
American Public Health Association, 755 Boylston St., Boston, Mass.
National American Woman Suffrage Association, 505 Fifth Ave., New York City.
National Association Opposed to Woman Suffrage, 37 W. 39th St., New York City.
National Civil Service Reform League, 79 Wall St., New York City.
National Conference of Charities and Correction, 315 Plymouth Court, Chicago, Ill.
National Conference on City Planning, 19 Congress St., Boston, Mass.
National Conservation Congress, Riggs Building, Washington, D. C.
National Educational Association, J. W. Crabtree, Thomas Circle, Washington, D. C.
National Housing Association, 105 East 22d St., New York City.
National Municipal League, North American Building, Philadelphia, Pa.
National Security League, 19 West 44th St., New York City.
National Short Ballot Organization, 383 Fourth Ave., New York City.
National Tax Association, 15 Dey St., New York City.
Pan-American Union, Washington, D. C.
Playgrounds Association of America, 1 Madison Ave., New York City.
Proportional Representation League, Secretary, Haverford, Pa.
Single Tax Association, 150 Nassau St., New York City.
The National Voters' League, Woodward Building, Washington, D. C.
The National Popular Government League, Munsey Building, Washington, D. C.

The *Congressional Record* may be obtained for the high school library by writing to one of the United States senators or the member of Congress for the district. The *Record* contains the speeches and discussions in Congress. It is published daily while Congress is in session.

APPENDIX

ARTICLES OF CONFEDERATION (1781).

[The following is the official engrossed text as printed in *American History Leaflets*, No. 20, from the original parchment rolls.]

To all to Whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting. Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of Our Lord One thousand seven Hundred and Seventy seven, and in the second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the Words following, viz. "ARTICLES OF CONFEDERATION and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

ARTICLE I. THE Stile of this confederacy shall be "THE UNITED STATES OF AMERICA."

ARTICLE II. EACH state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III. THE said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV. THE better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

IF any Person be guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

FULL faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V. FOR the more convenient management of the general interest of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

NO state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

EACH state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

IN determining questions in the united states, in Congress assembled, each state shall have one vote.

FREEDOM of speech and debate in congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI. NO state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

NO two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purpose for which the same is to be entered into, and how long it shall continue.

NO state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

NO vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

NO state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted: nor

shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

ARTICLE VII. WHEN land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII. ALL charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

ARTICLE IX. THE united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be di-

vided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

THE united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. WHENEVER the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without shewing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be

administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no state shall be deprived of territory for the benefit of the united states.

ALL controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near asmaybe in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

THE united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that ot the respective states — fixing the standard of weights and measures throughout the United States — regulating the trade and manageing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated — establishing and regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office — appointing all officers of the land forces, in the service of the united states, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states — making rules for the government and regulation of the said land and naval forces, and directing their operations.

THE united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for manageing the general affairs of the united states under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of Money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences — to borrow money, or emit bills on the credit of the united states, transmitting every half year

to the respective states an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate;

and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X. THE committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

ARTICLE XI. CANADA acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. ALL bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLE XIII. EVERY state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. AND the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great GOVERNOR of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. **know ye** that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify

and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: AND we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. AND that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. IN WITNESS whereof we have hereunto set our hands in Congress. DONE at Philadelphia in the state of Pennsylvania the ninth Day of July in the Year of our Lord one Thousand seven Hundred and Seventy eight, and in the third year of the independence of America.

[Signatures.]

CONSTITUTION OF THE UNITED STATES OF AMERICA* (1789)†.

[The following text of the Federal Constitution, including the Amendments thereto, is reprinted with the accompanying note from *American History Leaflets*, No. 8, in preparing which the original parchment rolls were compared.]

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE. I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. [§ 1.] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.‡

[§ 2.] No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[§ 3.] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, [which shall be determined

* There is no title in the original manuscript.

† The ninth state ratified June, 21, 1788. The government provided for went into operation March 4, 1789.

‡ Modified by Fourteenth Amendment.

by adding to the whole Number of free Persons,] including those bound to Service for a Term of Years, and excluding Indians not taxed, [three fifths of all other Persons].* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; [and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.]†

[§ 4.] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[§ 5.] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. [§ 1.] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[§ 2.] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[§ 3.] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[§ 4.] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

* Superseded by Fourteenth Amendment.

† Temporary clause.

[§ 5.] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[§ 6.] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[§ 7.] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. [§ 1.] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[§ 2.] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. [§ 1.] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[§ 2.] Each House may determine the Rules of its Proceedings, punish its Members for Disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[§ 3.] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[§ 4.] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. [§ 1.] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law,

and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[§ 2.] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [§ 1.] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[§ 2.] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[§ 3.] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power [§ 1.] To lay and

collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[§ 2.] To borrow Money on the credit of the United States;

[§ 3.] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[§ 4.] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[§ 5.] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[§ 6.] To provide for the Punishment of counterfeiting the Securities and current coin of the United States;

[§ 7.] To establish Post Offices and post Roads;

[§ 8.] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[§ 9.] To constitute Tribunals inferior to the supreme Court;

[§ 10.] To define and Punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[§ 11.] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[§ 12.] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[§ 13.] To provide and maintain a Navy;

[§ 14.] To make Rules for the Government and Regulation of the land and naval Forces;

[§ 15.] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[§ 16.] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[§ 17.] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[§ 18.] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. [§ 1.] [The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.]*

[§ 2.] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[§ 3.] No Bill of Attainder or ex post facto Law shall be passed.†

[§ 4.] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[§ 5.] No Tax or Duty shall be laid on Articles exported from any State.

[§ 6.] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[§ 7.] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[§ 8.] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.‡

SECTION 10. [§ 1.] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[§ 2.] No State shall, without the Consent of the Congress, lay

* Temporary provision.

† Extended by the first eight Amendments.

‡ Extended by Ninth and Tenth Amendments.

any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws : and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[§ 3.] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.*

ARTICLE. II.

SECTION. 1. [§ 1.] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[§ 2.] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress : but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State hav-

* Extended by Thirteenth, Fourteenth and Fifteenth Amendments.

ing one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.] *

[§ 3.] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[§ 4.] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[§ 5.] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[§ 6.] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[§ 7.] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. [§ 1.] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall

* Superseded by Twelfth Amendment.

have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[§ 2.] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[§ 3.] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. [§ 1.] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other

public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; * — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[§ 2.] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[§ 3.] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. [§ 1.] Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[§ 2.] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. [§ 1.] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. †

[§ 2.] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another

* Limited by Eleventh Amendment.

† Extended by Fourteenth Amendment.

State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[§ 3.] [No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.] *

SECTION. 3. [§ 1.] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[§ 2.] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof. as the one or the other Mode of Ratification may be proposed by the Congress; Provided [that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and] † that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

* Limited by Thirteenth Amendment.

† Temporary provision.

ARTICLE. VI.

[§ 1.] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. *

[§ 2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[§ 3.] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

[Note of the draughtsman as to interlineations in the text of the manuscript.]

Attest
WILLIAM JACKSON
Secretary.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth **In Witness** whereof We have hereunto subscribed our names. †

GO WASHINGTON—
Presidt and deputy from Virginia.

[Signatures.]

AMENDMENTS.

ARTICLES in addition to and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution. ‡

* Extended by Fourteenth Amendment, Section 4.

† These signatures have no other legal force than that of attestation.

‡ This heading appears only in the joint resolution submitting the first ten amendments.

[ARTICLE I.]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and dis-

* In the original manuscripts the first twelve amendments have no numbers

trict wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.*

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.†

[ARTICLE XII.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in dis-

* Amendments First to Tenth appear to have been in force from Nov. 3, 1791.

† Proclaimed to be in force Jan. 8, 1798.

tinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. *

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. SECTION 2. Congress shall have power to enforce this article by appropriate legislation.†

* Proclaimed to be in force Sept. 25, 1804.

† Proclaimed to be in force Dec. 18, 1865. Bears the unnecessary approval of the President.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

ARTICLE XV.†

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation. —‡

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. **

ARTICLE XVII.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution. **

* Proclaimed to be in force July 28, 1868.

† Amendments Thirteenth, Fourteenth and Fifteenth are numbered in the original manuscripts.

‡ Proclaimed to be in force Mar. 30, 1870.

** Adopted, 1913.

STATE STATISTICS

States		Date of Admission	Area in Sq. Miles	Population in 1910
1. Delaware	The Thirteen Original States		2,050	202,322
2. Pennsylvania			45,215	7,665,111
3. New Jersey			7,815	2,537,167
4. Georgia			59,475	2,609,121
5. Connecticut			4,990	1,114,756
6. Massachusetts			8,315	3,366,416
7. Maryland			12,210	1,295,346
8. South Carolina			30,570	1,515,400
9. New Hampshire			9,305	430,572
10. Virginia			42,450	2,061,612
11. New York			49,170	9,113,614
12. North Carolina			52,250	2,206,287
13. Rhode Island			1,250	542,610
14. Vermont admitted		March 4, 1791	9,565	355,956
15. Kentucky "		June 1, 1792	40,400	2,289,905
16. Tennessee "		June 1, 1796	42,050	2,184,789
17. Ohio "		Feb. 19, 1803	41,060	4,767,121
18. Louisiana "		April 8, 1812	48,720	1,656,388
19. Indiana "		Dec. 11, 1816	36,350	2,700,876
20. Mississippi "		Dec. 10, 1817	46,810	1,797,114
21. Illinois "		Dec. 3, 1818	56,650	5,638,591
22. Alabama "		Dec. 14, 1819	52,250	2,138,093
23. Maine "		March 15, 1820	33,040	742,371
24. Missouri "		Aug. 10, 1821	69,415	3,293,335
25. Arkansas "		June 15, 1836	53,850	1,574,449
26. Michigan "		Jan. 26, 1837	58,915	2,810,173
27. Florida "		March 3, 1845	58,680	751,139
28. Texas "		Dec. 29, 1845	265,780	3,896,542
29. Iowa "		Dec. 28, 1846	56,025	2,224,771
30. Wisconsin "		May 29, 1848	56,040	2,333,860
31. California "		Sept. 9, 1850	158,360	2,377,549
32. Minnesota "		May 11, 1858	83,365	2,075,708
33. Oregon "		Feb. 14, 1859	96,030	672,765
34. Kansas "		Jan. 29, 1861	82,080	1,690,949
35. West Virginia "		June 19, 1863	24,780	1,221,119
36. Nevada "		Oct. 31, 1864	110,700	81,875
37. Nebraska "		March 1, 1867	77,510	1,192,214
38. Colorado "		Aug. 1, 1876	103,925	799,024
39. North Dakota "		Nov. 3, 1889	70,795	577,056
40. So. Dakota "		Nov. 3, 1889	77,650	583,888
41. Montana "		Nov. 8, 1889	146,080	376,053
42. Washington "		Nov. 11, 1889	69,180	1,141,990
43. Idaho "		July 3, 1890	84,800	325,594
44. Wyoming "		July 10, 1890	97,890	145,965
45. Utah "		Jan. 4, 1896	84,970	373,351
46. Oklahoma "		Nov. 16, 1907	70,430	1,657,155
47. New Mexico "		Jan, 6, 1912	122,580	327,301
48. Arizona "		Feb. 14, 1912	113,020	204,354

TERRITORIES, ETC.

Alaska	577,390	64,356
District of Columbia	70	331,069
Hawaii	6,500	191,909
Philippines*	140,000	7,635,426
Porto Rico	3,600	1,118,012

* 1903

AREA OF THE UNITED STATES IN SQUARE MILES

Area in 1790	827,000
Area in 1910	3,750,000

The latter figures include all of the dependencies of the United States.

POPULATION OF CONTINENTAL UNITED STATES BY DECADES

1790	3,929,214
1800	5,308,483
1810	7,239,881
1820	9,638,453
1830	12,866,020
1840	17,069,453
1850	23,191,876
1860	31,443,321
1870	38,558,371
1880	50,155,783
1890	62,622,250
1900	75,477,467
1910	91,972,266

If the population of the Philippines and other island dependencies were added, the total population at the present time would be about 101,000,000.

CONGRESS AND THE ELECTORAL COLLEGE

States	Senate	House Rep's	Electoral Vote	States	Senate	House Rep's	Electoral Vote
Alabama	2	10	12	Nevada	2	1	3
Arizona	2	1	3	New Hampshire	2	2	4
Arkansas	2	7	9	New Jersey	2	12	14
California	2	11	13	New Mexico	2	1	3
Colorado	2	4	6	New York	2	43	45
Connecticut	2	5	7	North Carolina	2	10	12
Delaware	2	1	3	North Dakota	2	3	5
Florida	2	4	6	Ohio	2	22	24
Georgia	2	12	14	Oklahoma	2	8	10
Idaho	2	2	4	Oregon	2	3	5
Illinois	2	27	29	Pennsylvania	2	36	38
Indiana	2	13	15	Rhode Island	2	3	5
Iowa	2	11	13	South Carolina	2	7	9
Kansas	2	8	10	South Dakota	2	3	5
Kentucky	2	11	13	Tennessee	2	10	12
Louisiana	2	8	10	Texas	2	18	20
Maine	2	4	6	Utah	2	2	4
Maryland	2	6	8	Vermont	2	2	4
Massachusetts	2	16	18	Virginia	2	10	12
Michigan	2	13	15	Washington	2	5	7
Minnesota	2	10	12	West Virginia	2	6	8
Mississippi	2	8	10	Wisconsin	2	11	13
Missouri	2	16	18	Wyoming	2	1	3
Montana	2	2	4				
Nebraska	2	6	8	Total	96	435	531

Two Territorial Delegates — one each from Alaska and Hawaii — sit in the House of Representatives. These delegates are permitted to speak, but not to vote. Porto Rico is represented in Congress by a Commissioner, and the Philippines by two Commissioners

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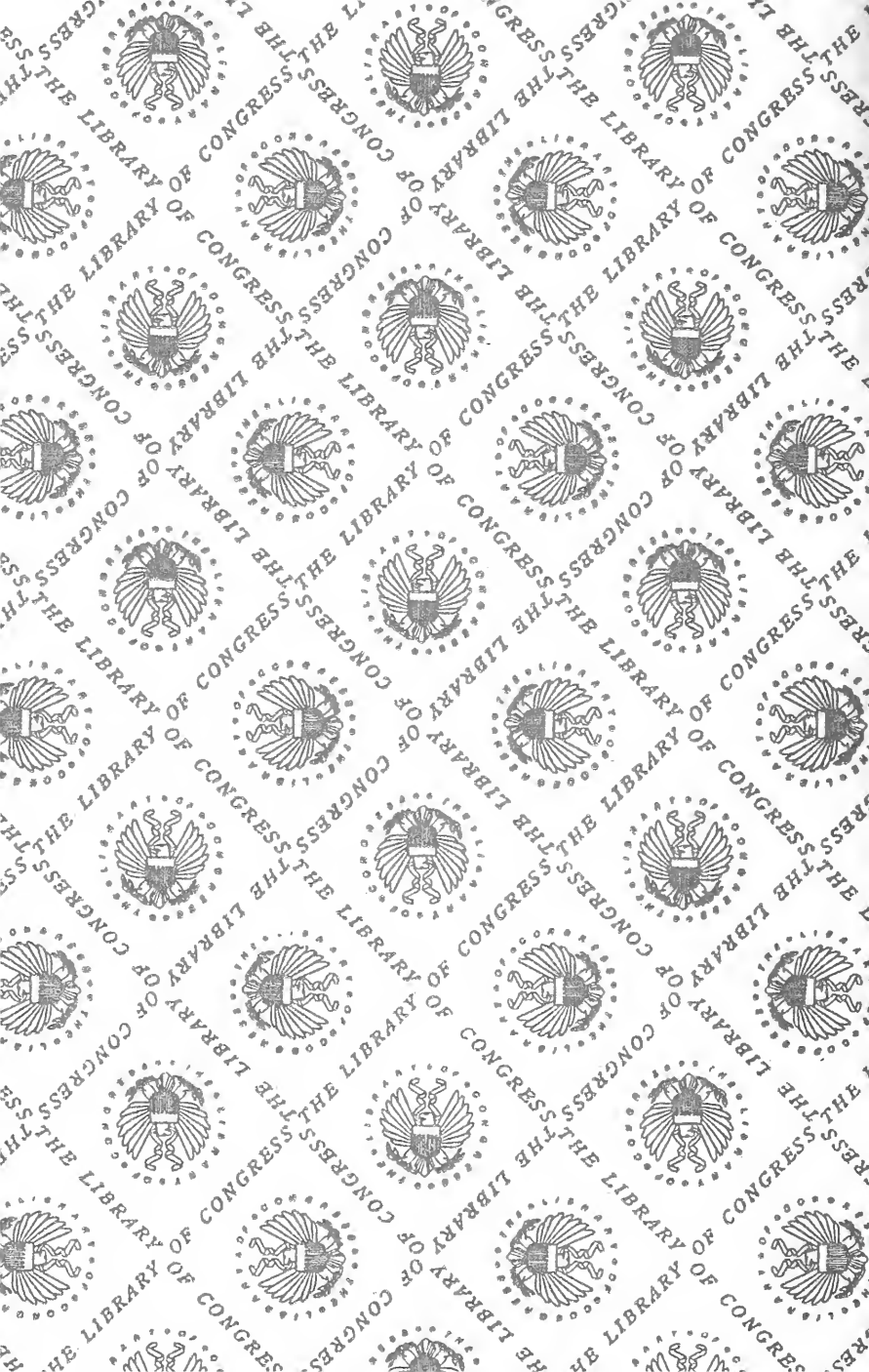
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